

STATE OF MICHIGAN
IN THE SUPREME COURT

KERRY JENDRUSINA,

Plaintiff/Appellee,

v

Supreme Court No. 154717
Court of Appeals No. 325135

SHYAM MISHRA, M.D., and SHYAM N.
MISHRA, M.D., P.C.,

Defendants/Appellants.

AMICUS CURIAE BRIEF OF THE MICHIGAN DEFENSE TRIAL COUNSEL
IN SUPPORT OF APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

Respectfully submitted,

WILLINGHAM & COTÉ, P.C.
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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae, Michigan Defense Trial Counsel (MDTC), is a statewide association of attorneys whose primary focus is the representation of defendants in civil proceedings. Established in 1979 to enhance and promote the civil defense bar, MDTC accomplishes this by facilitating discourse among and advancing the knowledge and skills of defense lawyers to improve the adversary system of justice in Michigan. MDTC appears before this Court as a representative of defense lawyers and their clients throughout Michigan, a significant portion of which are potentially affected by the issues involved in this case.

INTRODUCTION AND REASONS SUPPORTING APPEAL

STATEMENT OF FACTS

MDTC adopts the statement of facts contained in defendants/appellants' application for leave to appeal.

STANDARD OF REVIEW

MDTC agrees with the standard of review stated in defendants/appellants' application for leave to appeal.

LEGAL ARGUMENT

I. Jurisprudential Significance of this appeal.

This appeal pertains to a published Court of Appeals decision that rewrites the statutory text of the medical malpractice discovery rule, MCL 600.5838a(2), by converting the objective “should have discovered” language to a subjective “actually discovered” standard. It dispels any requirement that a plaintiff exercise reasonable diligence in discovering a claim, thus permitting a plaintiff to adopt a “head-in-the-sand” approach, and negate any period of limitation by claiming, “I did not know.” Such a ruling is not only contrary to this Court’s decisions in *Solowy v Oakwood Hosp Corp*, 454 Mich 214; 561 NW2d 843 (1997), and *Moll v Abbott Laboratories*, 444 Mich 1; 506 NW2d 816 (1993), it is inconsistent with the Legislature’s purpose in enacting tort reform measures, and its express requirement that the *plaintiff* demonstrate that “as a result of physical discomfort, appearance, condition, or otherwise, neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim.”

Beyond the scope of medical malpractice, this judicial alteration in a published opinion of the commonly used standard “should have,” has the potential to affect *any* cause of action containing this objective standard. There are 29 statutes containing the phrase, “should have discovered.”¹ There are 136 statutes containing the phrase, “should have known.”² And there are numerous common law doctrines that employ the standard. See, for instance, premises liability. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). The Court of Appeals opinion in the instant case, which has the potential of altering many different areas of law, should not be allowed to continue as binding precedent.

¹ See Exhibit A.

² See Exhibit B.

II. MCL 600.5838a was enacted by the Legislature as part of a comprehensive measure of tort reform.

In the mid-80s, the Michigan Legislature was dealing with a state in a state of legal crisis as a result of increased lawsuits. One area of particular concern was medical malpractice liability, which had seen an increase in lawsuits of 150 percent in just six years, causing medical malpractice insurance rates to double and some doctors to stop providing care in the riskiest of specialties.³ In response, the Legislature in 1986 passed legislation to curb lawsuit abuse.⁴

These changes not only benefit[ed] doctors but also improve[d] patients' access to care. Moreover, they reduce[d] the practice of defensive medicine, which in turn lead[] to better and more affordable health care.⁵

“Since the mid-1980s, there have been three major packages of general, non-automobile related tort reform legislation.”⁶ In 1986, the Michigan Legislature passed Public Act No. 178, which amended the Revised Judicature Act. This legislation contained provisions applying strictly to medical malpractice actions.⁷ One of these provisions “[a]mended the act’s statute of limitations provisions by revising the time when a claim would accrue.”⁸ The statute of limitations was revised again in the 1993 tort reform legislation.⁹ See 1993 PA 78.

³ Center for Legal Policy at the Manhattan Institute, *Trial Lawyers Inc., Michigan Update*, No. 4. June 2008, p 2, attached as Exhibit C.

⁴ *Id.*

⁵ *Id.* at 5, citing Daniel Kessler and Mark McClellan, *Do Doctors Practice Defensive Medicine?*, Q REV ECON Fin (May 1996).

⁶ Legislative Service Bureau Research Services Division, Legislative Brief, *History of Tort Reform in Michigan* (February 2006), attached as Exhibit D.

⁷ *Id.* p 2.

⁸ *Id.* p 3. Generally, medical malpractice actions are governed by a two-year statute of limitations, pursuant to MCL 600.5805(6):

(6) Except as provided in this chapter, the period of limitations is two years for an action charging malpractice.

MCL 600.5805(6) has largely remained unchanged. However the statute governing accrual of medical malpractice claims, MCL 600.5838a, has been altered significantly.

⁹ *Id.* p 4.

Prior to the adoption of the amended medical malpractice accrual statute, MCL 600.5838a, Michigan recognized the “last treatment” doctrine, which permitted a plaintiff to bring suit long after the claimed act of malpractice as long as the doctor continued to treat. See *Morgan v Taylor*, 434 Mich 180; 451 NW2d 852 (1990). As explained by dissenting Judge Whitbeck, and quoted with approval in *Levy v Martin*, 463 Mich 478, 485; 620 NW2d 292 (2001),

[U]nder the rationale of the last treatment rule, a patient was (before the amendment of [MCL 500.5838(1)] making it inapplicable to medical malpractice claims) entitled to rely “completely” on the health professional and not inquire into the effectiveness of the health professional’s measures prior to termination of the relationship A patient who attended a periodic examination and was not diagnosed with any medical problem was under the rationale of the last treatment rule provided with an “assurance” of good health that induced the patient to take no further action to investigate the pertinent health matters until the next periodic examination.

The Legislature eliminated the last treatment doctrine in 1986 by adopting MCL 600.5838a. Prior to the amendment, the accrual statute relevantly read, “A claim . . . accrues at the time that person discontinues treating or otherwise serving the plaintiff in a professional . . . capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.” *Morgan v Taylor*, 434 Mich 180, 185-186; 451 NW2d 852 (1990). “For acts or omissions giving rise to a claim of malpractice occurring after October 1, 1986, the claim accrues on the date of the alleged act or omission giving rise to the claim.” *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 220; 561 NW2d 843 (1997). MCL 600.5838a clarifies that claims accrue at the time of the act or omission that is the basis of the claim regardless when a plaintiff discovers the claim:

For purposes of this act, a claim based on the medical malpractice of a person or entity who is or holds himself or herself out to be a licensed health care professional . . . accrues *at the time of the act* or omission that is the basis for the claim of medical malpractice, *regardless of the time the plaintiff discovers* or

otherwise has knowledge of the claim. . . . [MCL 600.5838a(1) (Emphasis added)].

In *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994), this Court noted that an accrual provision containing identical language, MCL 600.5838, was different from traditional tort concepts of accrual, which require all elements of the tort to exist:

Previous case law has confused the application of the statute by inserting traditional tort concepts of "accrual" into the clear statutory scheme. The normal rule in tort law is that a cause of action does not accrue until all elements of the tort exist. Section 5838 expressly rejects this rule by providing that accrual occurs without regard to whether the client's malpractice claim is ripe.

* * *

Clearly, the Legislature voiced its intent when it amended § 5838 in 1975, adding the words "regardless of the time the plaintiff discovers or otherwise has knowledge of the claim" to the end of the first part of the section. . . . Lack of ripeness, i.e., that not all the elements of the tort have been discovered, is irrelevant to the two-year limitation period. [*Id.* at 542, 543-544]

In *McKiney v Clayman*, 237 Mich App 198, 203; 602 NW2d 612, 615 (1999), the Court of Appeals noted that the 1986 enactment of MCL 600.5838a:

reflects the Legislature's desire to focus on the accrual date of the medical malpractice claims on the occasion of the act or omission complained of, and the Legislature's clear rejection of the notion that the existence of a continuing physician-patient relationship by itself could extend the accrual date beyond the specific, allegedly negligent act or omission charged.

Thus, appellate courts have recognized that the Legislature took clear measures to limit the time in which a plaintiff could bring suit. While MCL 600.5838a(2) contains a six-month discovery rule, the burden is on the plaintiff to establish that he or she could not and should not have discovered the claim within the relevant timeframe, and restricts the means by which the plaintiff can make this showing:

[A]n action involving a claim based on medical malpractice may be commenced . . . within 6 months after the plaintiff discovers or *should have discovered* the existence of the claim The burden of proving that the plaintiff, *as a result of physical discomfort, appearance, condition, or otherwise,*

neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim is on the plaintiff. A medical malpractice action that is not commenced within the time prescribed by this subsection is barred.

The means by which a plaintiff must demonstrate that he or she neither discovered nor should have discovered the claim, which is limited by statute to “physical discomfort, appearance, condition, or otherwise,” was likewise added by the Legislature in 1986. *Solowy*, *supra*, 454 Mich at 231 n 8.

III. Case law interpreting the discovery rule has required the plaintiff to show due diligence in discovering a claim.

The discovery rule can apply when an element of a cause of action, such as damages, has occurred, yet is not discoverable by the plaintiff even with reasonable diligence. *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 640; 692 NW2d 398 (2004). Under the discovery rule, the statute of limitations ““begins to run when the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered a possible cause of action.”” *Id.* (citation omitted). Whether a plaintiff, through the exercise of reasonable diligence, should have discovered a possible cause of action is determined by an objective standard. *Levinson v Trotsky*, 199 Mich App 110, 112-113; 500 NW2d 762 (1993). The plaintiff need only be aware that a possible cause of action exists, not that a likely cause of action exists. *Gebhardt v O’Rourke*, 444 Mich 535, 544; 510 NW2d 900 (1994). The plaintiff has a duty to diligently pursue any legal claims. *Moll v Abbott Laboratories*, 444 Mich 1, 29; 506 NW2d 816 (1993). “Once a plaintiff is aware of an injury and its possible cause, the plaintiff is equipped with the necessary knowledge to preserve and diligently pursue his claim.” *Solowy v Oakwood Hosp Corp*, 454 Mich 214, 223; 561 NW2d 843 (1997).

In *Moll v Abbott Laboratories*, *supra*, this Court applied the common-law discovery rule to the statutory period of limitation in a pharmaceutical products liability action. The common-

law discovery rule has been largely (if not completely) abrogated. See *Trendadue v Gorton*, 479 Mich 378, 390-391; 738 NW2d 664 (2007). However, the principles discussed in *Moll* pertaining to nearly identical language used in the statutory discovery rule in the instant case bear consideration. This Court in *Moll* reiterated the rule as follows:

[T]he statute of limitations begins to run when the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered a possible cause of action. [*Id.* at 5.]

The Court of Appeals in *Moll*, much like the Court of Appeals in the instant case,¹⁰ had changed the standard to one more lenient to a plaintiff:

[A] plaintiff's cause of action does not accrue until the plaintiff discovers or through the exercise of reasonable diligence should have discovered that the plaintiff has been injured *and what a likely cause of the injury was*. [*Id.* at 11.]

This Court rejected the Court of Appeals' revision, stating:

The Court of Appeals interpretation increases the period before which a plaintiff's claim accrues under the discovery rule because a "*possible cause of action*" *generally will be discovered before a "likely cause" of injury*. [*Id.* at 21-22 (emphasis added).]

This Court noted that the "likely" standard adopted by the Court of Appeals erroneously raised the level of certainty with respect to causation from possible to probable. *Id.* at 22. It concluded that this incorrectly raised level upset the balance between the judicially created discovery rule and the legislatively mandated statute of limitations because *one of the purposes of periods of limitation is to penalize plaintiffs who have not been industrious in pursuing their*

¹⁰ In the instant case, the Court of Appeals stated:

[T]he legislature chose the phrase "should have" rather than "could have" in the statutory text. According to the New Oxford American Dictionary (3rd ed), "could" is "used to indicate *possibility*" whereas "should" is "used to indicate what is *probable*." (Emphasis added). Thus, the inquiry is not whether it was *possible* for a reasonable lay person to have discovered the existence of the claim; the inquiry is whether it was *probable* that a reasonable lay person would have discovered the existence of the claim. [*Jendrusina v Mishra*, ___ Mich App ___, ___; ___ NW2d ___ (2016), *slip op* at 2 (footnote omitted).]

claims, while another is to encourage claimants to investigate and pursue causes of action. Id. at 22, 23. This Court further cautioned against applying a subjective standard to “discovers, or through the exercise of reasonable diligence, should have discovered,” stating that such a standard would allow a plaintiff “to legally forestall suit until the time she is convinced that she is injured,” and noted that “the date of such ‘discovery’ will be completely under the control of the plaintiff.” *Id.* at 18. Instead, this Court held that “should have known” was an objective standard based on examination of the surrounding circumstances:

While the term “knows” is obviously a subjective standard, the phrase “should have known” is an objective standard based on an examination of the surrounding circumstances. Consequently, we find that a plaintiff’s cause of action accrues when, on the basis of objective facts, the plaintiff should have known of an injury, even if a subjective belief regarding the injury occurs at a later date. [*Id.* at 18.]

This Court concluded that *once a plaintiff discovered an injury, the plaintiff had the statutory period to consult with the legal and medical community about the claim and resulting damages. Id.* at 20.

In Justice Boyle’s partial concurrence, she opined that a plaintiff need not discover each element of a claim before the claim accrues:

[A]doption of a standard that deferred accrual until plaintiff knew, or could reasonably be expected to know, of the defendant’s breach of duty, or until the plaintiff had reason to suspect, or was aware of facts that would have alerted a reasonable person to the possibility, that a legal duty to him had been breached, would go far to eliminate the statute of limitations as a defense separate from the denial of a breach of duty. . . . In short, a plaintiff need not know she has suffered an invasion of a legal right before a cause of action accrues. [*Id.* at 31 (BOYLE, J, *Concurring in part and dissenting in part*) (internal citations omitted).]

She further opined that a subjective standard would negate the requirement that a plaintiff be diligent in pursuing claims:

[T]he notice of cause cannot await a subjective belief in the linkage between injury and cause in fact. To delay operation of the discovery rule to this point would *emasculate the diligence requirement* of the rule. *Nor, for the same*

reason, is it necessary that the plaintiff have a definitive professional opinion regarding the injury or its cause. [Id.]

In *Shawl v Dhital*, 209 Mich App 321, 324-325; 529 NW2d 661 (1995), the Court of Appeals applied the *Moll* Court's "possible cause of action" standard to MCL 600.5838a(2). In that case, the decedent first sought treatment in 1983. Biopsies performed in 1983 and 1986 were misdiagnosed. The decedent and his plaintiff father learned in 1988 that the cancer had spread. The plaintiff filed a lawsuit on January 3, 1990. The trial court denied the defendant doctor's summary disposition motion, which was premised on the claims being barred by the statute of limitation. On appeal, the plaintiff argued that the earliest he could have discovered the doctor's negligence was during the doctor's May 31, 1990 deposition. The Court of Appeals rejected this argument:

[P]laintiff's argument misapprehends the "possible cause of action" standard for the discovery rule in *Moll*, *supra*. Under this test, a claimant is deemed aware of a cause of action when the claimant has knowledge of an injury and its "possible" cause, thus encouraging claimants to *investigate diligently and pursue causes of actions* in harmony with the policies underlying the statute of limitations. Consistent with this rationale, *a claimant need not be aware of the details of the evidence by which to establish his cause of action. [Id. at 326-327 (internal quotations and citations omitted, emphasis added).]*

This Court in *Gebhardt* likewise applied the *Moll* standard to the statutory discovery rule containing identical accrual language, MCL 600.5838. *Gebhardt*, *supra*, 444 Mich at 545. A plaintiff is deemed to have discovered a cause of action when the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, an injury and its possible cause. *Id.* The plaintiff need only be aware that she has a possible cause of action, not that she has a likely cause of action. *Id.* at 544. "Once an injury and its possible cause is known, the plaintiff is aware of a possible cause of action." *Id.* at 545.

In *Solowy v Oakwood Hosp. Corp.*, 454 Mich 214, 219; 561 NW2d 843 (1997), the plaintiff argued that the standard applied in *Moll* and *Gebhardt* should not be applied in the

context of medical malpractice. This Court disagreed. In that case, the plaintiff was examined by a physician and told that an ear lesion was either the return of cancer or a benign lesion. If the lesion was cancer, the plaintiff would have a cause of action against her previous physicians. The plaintiff did not determine that the lesion was, in fact, cancer until a month after the initial examination. The plaintiff brought suit within six months after the cancer was confirmed, but more than six months after the initial examination. The defendant moved for summary disposition arguing that the six-month period started to run after the plaintiff was told it could be cancer or benign and not when the cancer was confirmed. The trial court granted the motion, and the Court of Appeals affirmed. This Court, in rejecting plaintiff's argument that a different standard should apply, stated:

The "possible cause of action" standard does not require that the plaintiff know that the injury to her ear, in the form of the advancement of the disease process, was in fact or even likely caused by the defendant doctors' alleged omissions. Neither does the standard require that the plaintiff be aware of the full extent of her injury before the clock begins to run. . . . [A]fter the [initial examination] visit, the plaintiff, while lacking specific proofs, was armed with the requisite knowledge to diligently pursue her claim. Id. at 224-225.]

This Court further noted that once plaintiff was aware of the possible recurrence of cancer, she already knew that she had delayed treatment in reliance on the defendant doctors' failure to warn her of the possibility of recurrence. *Id.* at 225. The Court concluded that the plaintiff failed to meet the burden of demonstrating that she, as a result of physical discomfort, appearance, condition, or otherwise, neither discovered nor should have discovered the existence of her claim.

In *Driver v Naini*, 490 Mich 239, 243; 802 NW2d 311 (2011), the plaintiff visited his doctor in 2003. The doctor administered a carcinoembryonic antigen (CEA) test, which showed a slightly elevated CEA level. The doctor did not order a colonoscopy or take further action. In 2005, the plaintiff was diagnosed with stage IV colon cancer, which had metastasized to his

liver. *Id.* The plaintiff timely filed a notice of intent against the doctor and his professional corporation on April 25, 2006. In January 2007, the doctor sent a notice of nonparty at fault, naming another professional corporation for which the doctor worked at the time of the alleged malpractice. The plaintiff sent the nonparty corporation a notice of intent and moved to amend his complaint. *Id.* at 244. The Court of Appeals held that the plaintiff's claim accrued when he was diagnosed with colon cancer in 2005, and that the plaintiff had two years to file an action against the nonparty corporation. *Id.* at 245. This Court disagreed:

Dr. Niani failed to screen for cancer in 2003 after a test showed that he had an elevated CEA level. This was the negligent act that formed the basis for his claim. Because the claim accrued in 2003 and plaintiff discovered the claim more than two years later, the six-month discovery rule applied. Contrary to the Court of Appeals' erroneous conclusion, the November 2005 diagnosis of cancer was not the negligent act that gave rise to plaintiff's claim. Accordingly, plaintiff had six months from November 2005 (i.e., until May 2006) to commence a medical malpractice action against *all* defendants.

There is no dispute that plaintiff timely filed suit within this six-month period with respect to [the doctor and the first-named corporation] . . . Plaintiff, however, first provided [the nonparty corporation] an NOI in March 2007, long after the six-month discovery period expired in May 2006. . . . Hence, plaintiff's complaint was time-barred with regard to [the nonparty corporation]. [*Id.* at 250-251.]

Thus, this Court held that plaintiff discovered his claim when he learned that he had cancer, not when he learned that the nonparty corporation might have liability or the basis for that liability.

Had the Court of Appeals majority in the instant case followed the preceding precedent, it would have concluded that: (a) plaintiff's cause of action accrued in 2007 or 2008 when plaintiff's blood lab tests began showing abnormal and worsening levels of two blood measures related to kidney function, but Dr. Mishra allegedly did not tell plaintiff of these results or refer him to a nephrologist; (b) plaintiff discovered his claim no later than January 3, 2011, when he went to the hospital with flu-like symptoms, was diagnosed with irreversible kidney failure, and

was placed on lifetime dialysis; (c) plaintiff had until July 3, 2011 to discern the legal basis for his claim and file his medical malpractice suit against Dr. Mishra; and, (d) plaintiff's medical malpractice suit, filed sometime after September 20, 2012, was time-barred.

IV. The Court of Appeals did not give effect to the entire statutory provision as written.

Long-established rules of statutory construction require that “courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute.” *Hannay v Transp Dep't*, 497 Mich 45, 57, 860 NW2d 67 (2014) (citation and quotation marks omitted). Moreover, statutes within the same act must be interpreted in harmony with the entire legislative scheme. *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009).

In the medical malpractice context, the Legislature has concluded that a claim accrues at the time of the alleged negligence, regardless whether the plaintiff discovers or otherwise has knowledge of the claim. MCL 600.5838a(1). As noted by this Court more than 20 years ago, the Legislature departed from traditional tort concepts in drafting the medical malpractice statutes. *Gebhardt, supra*, 444 Mich at 543-544:

Clearly, the Legislature voiced its intent when it amended § 5838 in 1975, adding the words “regardless of the time the plaintiff discovers or otherwise has knowledge of the claim” to the end of the first part of the section. . . . Lack of ripeness, i.e., that not all the elements of the tort have been discovered, is irrelevant to the two-year limitation period.

Therefore, the claim accrues even if the plaintiff is unable to establish the causal connection between the alleged act and the injuries suffered. The Legislature then provided only a limited exception to this general rule. While the common-law discovery rule contained the language, “through the exercise of reasonable diligence,” which is not contained in MCL 600.5838a(2), the statute here explicitly requires the plaintiff to establish that he or she could not have discovered the existence of the claim prior to the six-month discovery period. And it

further contains a significant limitation that the Court of Appeals in the instant case overlooked in that it sets forth the only means by which a plaintiff can establish that he or she could not have discovered the claim:

The burden of proving that the plaintiff, *as a result of physical discomfort, appearance, condition, or otherwise*, neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim is on the plaintiff. [Emphasis added.]

Thus, a plaintiff may only establish that he or she could not have discovered the claim as a result of physical discomfort, appearance, condition, or otherwise. Under the principle of *ejusdem generis*, the general phrase “or otherwise” must refer to items of like kind preceding it: physical discomfort, appearance, condition. “‘For instance, if someone speaks of using ‘tacks, staples, screws, nails rivets, and other things,’ the general term ‘other things’ surely refers to fasteners.’” *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 350 n 1; 656 NW2d 175 (2003) (citation omitted). The Legislature’s choice of words “physical discomfort, appearance, and condition,” was not an accident. These terms all pertain to a person’s signs and symptoms of injury or disease. “Sign” is defined as “an indication of the existence of something; any objective evidence of a disease, i.e., such evidence as is perceptible to the examining physician, as opposed to the subjective sensations (symptoms) of the patient.” *Dorland’s Illustrated Medical Dictionary* (30th ed). “Symptom” is defined as “any subjective evidence of disease or of a patient’s condition, i.e., such evidence as perceived by the patient; a noticeable change in a patient’s condition indicative of some bodily or mental state.” *Id.*

There are no references in the discovery statute to establishment of the causal connection between the defendant provider and the injury. Under the plain language of MCL 600.5838a, a plaintiff may only invoke the discovery rule if the plaintiff can demonstrate that there were no signs or symptoms of plaintiff’s injuries. Once objective signs or subjective symptoms exist, the

plaintiff has six months to discover the at-fault parties (not difficult to discern because limited to his or her medical providers), discover the causal connection (which can be done by consulting those in the legal and medical community), and file suit. The plaintiff may not, however, stick his or her head in the sand until all the elements of the claim fall in his or her lap. Thus, inability to establish a causal connection is not a proper basis for invoking the discovery rule. Yet, this is precisely what the published Court of Appeals opinion in the instant case permits. The opinion should not continue as precedent.

CONCLUSION AND RELIEF REQUESTED

The Court of Appeals Majority, in a published opinion, has rewritten the discovery statute pertaining to medical malpractice claims contrary to established precedent and the plain language of the statute itself. Its construction, which essentially removes the objective “should have discovered” standard and replaces it with a subjective “actually discovered” standard, has the potential of affecting the interpretation of at least 265 different statutes and who knows how many common law doctrines. Amicus joins in defendants/appellants’ request that this Court either grant leave to appeal or peremptorily reverse the Court of Appeals opinion for the reasons stated in the dissent.

Respectfully submitted,

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EXHIBIT A

List of 29 results for adv: "should have discovered"

1. 600.5838a. Medical malpractice claim; accrual; definitions; limitations

MI ST 600.5838a Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...FN2] or within 6 months after the plaintiff discovers or **should have discovered** the existence of the claim, whichever is later. However, except...

...of physical discomfort, appearance, condition, or otherwise, neither discovered nor **should have discovered** the existence of the claim at least 6 months before...

...5856, or within 6 months after the plaintiff discovers or **should have discovered** the existence of the claim, whichever is later. The burden...

...of physical discomfort, appearance, condition or otherwise, neither discovered nor **should have discovered** the existence of the claim at least 6 months before...

2. 600.5838. Malpractice claim; exception for medical malpractice; accrual; limitations

MI ST 600.5838 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...FN3] or within 6 months after the plaintiff discovers or **should have discovered** the existence of the claim, whichever is later. The plaintiff...

...the burden of proving that the plaintiff neither discovered nor **should have discovered** the existence of the claim at least 6 months before...

...accrued, or within six months of when he discovered or **should have discovered** his claim. *McMiddleton v. Bolling* (2005) 705 N.W.2d 720...

...generally Malpractice claim is tolled until client has discovered or **should have discovered** existence of damages. *Gambino v. Cardamone* (1987) 414 N.W.2d...

3. 600.5805. Injuries to persons or property

MI ST 600.5805 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...when alleged negligent act occurs, not when plaintiff discovers or **should have discovered** that negligence or malpractice. *Chase v. Sabin* (1994) 516 N.W.2d...

...the plaintiff discovers or, through the exercise of reasonable diligence, **should have discovered** a possible cause of action; once a claimant is aware...

...the plaintiff discovers, or through the exercise of reasonable diligence, **should have discovered** (1) an injury, and (2) the causal connection between plaintiff's...

...accrues when plaintiff discovers or, through exercise of reasonable diligence, **should have discovered** an injury and likely cause thereof regardless of whether plaintiff...

4. 600.5827. Accrual of claim; general rule

MI ST 600.5827 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

List of 29 results for adv: "should have discovered"

Chapter 58. Limitation of Actions

...accrues when plaintiff discovers, or through exercise of reasonable diligence **should have discovered**: (1) an injury, and (2) causal connection between injury and...

...in a given case depends on when plaintiff discovered or **should have discovered** a cause of action, which is an objective test. Shields...

...question her sanity in light of physician's alleged misrepresentations; patient **should have discovered** at some point during time period, through reasonable diligence, that...

...accrue until plaintiff discovers, or through exercise of reasonable diligence **should have discovered**, that she has been injured and what likely cause of...

5. 333.26340.Actions and proceedings; jurisdiction; limitations

MI ST 333.26340 | Michigan Compiled Laws Annotated | Chapter 333. Health

Michigan Compiled Laws Annotated

Chapter 333. Health

The Michigan Biologic Products Institute Transfer Act

...plaintiff or someone through whom the plaintiff claims discovered or **should have discovered** through reasonable diligence the existence of the claim or the...

6. 600.5855.Fraudulent concealment of claim or identity of person liable, discovery

MI ST 600.5855 | Michigan Compiled Laws Annotated | Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...person who is entitled to bring the action discovers, or **should have discovered**, the existence of the claim or the identity of the...

...at any time within two years after client discovers, or **should have discovered**, existence of claim. Corley v. Logan (1971) 192 N.W.2d...

...instant case, since the provision is inapplicable if the party **should have discovered** the existence of the claim, and since plaintiffs **should have discovered** their claim much sooner than the date when defendants filed...

...his claims within two years of date he discovered or **should have discovered** the existence of the causes of action. In re Estate...

7. 450.4515.Actions by members for improper conduct of managers or members in control; remedies; limitation period for damages

MI ST 450.4515 | Michigan Compiled Laws Annotated | Chapter 450. Corporations

Michigan Compiled Laws Annotated

Chapter 450. Corporations

Michigan Limited Liability Company Act

...or within 2 years after the member discovers or reasonably **should have discovered** the cause of action under this section, whichever occurs first...

...accrued or within 2 years after member discovered or reasonably **should have discovered** cause of action. Frank v. Linkner (2015) 871 N.W.2d...

8. 600.5833.Accrual of claim; breach of warranty of quality or fitness

MI ST 600.5833 | Michigan Compiled Laws Annotated | Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...seq.) did not begin to run until plaintiff discovered or **should have discovered** the breach, i.e., that painting was not authentic, plaintiff was...

List of 29 results for adv: "should have discovered"

...when employee either discovered or, through exercise of reasonable diligence, should have discovered that he had possible cause of action. Cullender v. BASF...

9. 440.2607.Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

MI ST 440.2607 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated
Chapter 440. Uniform Commercial Code
Uniform Commercial Code
Article 2. Sales
Part 6. Breach, Repudiation and Excuse

...buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred...

...did not, within a reasonable time after he discovered or should have discovered any breach, notify seller of breach was barred from any...

...did not, within a reasonable time after he discovered or should have discovered any breach, notify seller of breach was barred from any...

10. 440.2966.Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over

MI ST 440.2966 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated
Chapter 440. Uniform Commercial Code
Uniform Commercial Code
Article 2A. Leases
Part 5. Default

...a)Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the...

...default, within a reasonable time after the lessee discovered or should have discovered the default. In a finance lease, notice may be given...

11. 442.322.Warranty of authenticity of authorship, creation, degree of authenticity warranted

MI ST 442.322 Michigan Compiled Laws Annotated Chapter 442. Sales

Michigan Compiled Laws Annotated
Chapter 442. Sales
Sales of Fine Art

...statute did not begin to run until plaintiff discovered or should have discovered the breach, i.e., that painting was not authentic, plaintiff was...

12. 450.1489.Illegal, fraudulent, or willfully unfair and oppressive conduct; action by shareholder; relief

MI ST 450.1489 Michigan Compiled Laws Annotated Chapter 450. Corporations

Michigan Compiled Laws Annotated
Chapter 450. Corporations
Business Corporation Act
Chapter 4. Shareholders

...or within 2 years after the shareholder discovers or reasonably should have discovered the cause of action under this section, whichever occurs first...

...or within 2 years after the shareholder discovers or reasonably should have discovered the cause of action under this section, whichever occurs first...

13. 440.2608.Revocation of acceptance in whole or in part

MI ST 440.2608 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

List of 29 results for adv: "should have discovered"

Michigan Compiled Laws Annotated
 Chapter 440. Uniform Commercial Code
 Uniform Commercial Code
 Article 2. Sales
 Part 6. Breach, Repudiation and Excuse

...occur within a reasonable time after the buyer discovers or **should have discovered** the ground for it and before any substantial change in...

...has revoked within a reasonable time after he discovered or **should have discovered** nonconformity depends on the particular circumstances of the case. Fargo...

14. 450.2489. Illegal, fraudulent, or willfully unfair and oppressive conduct; action by director, member, or shareholder; relief

MI ST 450.2489 Michigan Compiled Laws Annotated Chapter 450. Corporations

Michigan Compiled Laws Annotated
 Chapter 450. Corporations
 Nonprofit Corporation Act
 Chapter 4. Shareholders and Members

...2 years after the shareholder or member discovers or reasonably **should have discovered** the cause of action under this section, whichever occurs first...

15. 440.2967. Revocation of acceptance of goods

MI ST 440.2967 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated
 Chapter 440. Uniform Commercial Code
 Uniform Commercial Code
 Article 2A. Leases
 Part 5. Default

...occur within a reasonable time after the lessee discovers or **should have discovered** the ground for it and before any substantial change in...

16. 600.5851. Disabilities of infancy or insanity at accrual of claim; year of grace; tacking; removal of infancy disability; medical malpractice exception; application to imprisonment disability

MI ST 600.5851 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
 Chapter 600. Revised Judicature Act of 1961
 Revised Judicature Act of 1961
 Chapter 58. Limitation of Actions

...accrued; or (3) six months after the child discovered or **should have discovered** the claim. Vanslebrouck ex rel. Vanslebrouck v. Halperin (2008) 747...

...disabilities, or within six months after the plaintiff discovers or **should have discovered** the existence of the claim, whichever is later, but not...

17. 440.2314. Implied warranty; merchantability, course of dealing, usage of trade

MI ST 440.2314 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated
 Chapter 440. Uniform Commercial Code
 Uniform Commercial Code
 Article 2. Sales
 Part 3. General Obligation and Construction of Contract

...plaintiff continued to drink bottler's product after she discovered, or **should have discovered**, that it contained glass particles. Barefield v. La Salle Coca...

...no injury, that her injury occurred after she discovered or **should have discovered** glass particles in soft drink, or that glass did not...

List of 29 results for adv: "should have discovered"

18. 691.1403.Defective highways; knowledge of defect, repair, presumption

MI ST 691.1403 Michigan Compiled Laws Annotated Chapter 691. Judiciary

Michigan Compiled Laws Annotated
Chapter 691. Judiciary
Governmental Liability for Negligence...a conclusive presumption of notice, or evidence showing that city should have discovered and repaired defect in exercise of reasonable diligence, i.e., constructive...**19. 440.2725.Statute of limitations in contracts for sale, contractual reduction; accrual, tolling**

MI ST 440.2725 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated
Chapter 440. Uniform Commercial Code
Uniform Commercial Code
Article 2. Sales
Part 7. Remedies...seq.) did not begin to run until plaintiff discovered or should have discovered the breach, i.e., that painting was not authentic, plaintiff was...**20. 440.3404.Imposters; fictitious payees**

MI ST 440.3404 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated
Chapter 440. Uniform Commercial Code
Uniform Commercial Code
Article 3. Negotiable Instruments
Part 4. Liability of Parties...and, therefore, state was not precluded on ground that state should have discovered the fraud, from asserting fact of forgery in attempting to...**21. 440.1201.General definitions**

MI ST 440.1201 Michigan Compiled Laws Annotated Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated
Chapter 440. Uniform Commercial Code
Uniform Commercial Code
Article 1. General Provisions
Part 2. General Definitions and Principles of Interpretation...did not, within a reasonable time after he discovered or should have discovered any breach, notify seller of breach was barred from any...**22. 600.5813.Other personal actions**

MI ST 600.5813 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 58. Limitation of Actions...when misrepresentation was perpetrated, and not when plaintiff discovered or should have discovered misrepresentation. Lorimer ex rel. Estate of Lorimer v. Berrelez, E.D.Mich...**23. 419.52.Contributory negligence; degree, effect; assumption of risk**

MI ST 419.52 Michigan Compiled Laws Annotated Chapter 419. Miscellaneous Labor Laws

Michigan Compiled Laws Annotated
Chapter 419. Miscellaneous Labor Laws
Liability of Railroads to Employees

List of 29 results for adv: "should have discovered"

...edge sideswiped push car on siding, whether engineer of train **should have discovered** push car and stopped in time to avoid collision was...

24. 600.5807.Damages for breaches of contract; specific performance; fiduciary bonds; deeds; mortgages; surety bonds; appeal bonds; public obligations

MI ST 600.5807 | Michigan Compiled Laws Annotated | Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 58. Limitation of Actions

...his claims within two years of date he discovered or **should have discovered** the existence of the causes of action. In re Estate...

25. 500.3105.Payment of benefits for accidental bodily injury; liability of insurer

MI ST 500.3105 | Michigan Compiled Laws Annotated | Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 31. Motor Vehicle Personal and Property Protection

...4) 21 Limitation of actions Issue of whether automobile insurer **should have discovered** alleged fraudulent submissions by medical providers at the time each...

26. 691.1406.Public buildings

MI ST 691.1406 | Michigan Compiled Laws Annotated | Chapter 691. Judiciary

Michigan Compiled Laws Annotated
Chapter 691. Judiciary
Governmental Liability for Negligence

...such context, constructive notice is demonstrated by showing that agency **should have discovered** defect in exercise of reasonable diligence. Ali v. City of...

27. 500.3107.Expenses and work loss benefits; personal protection insurance coverage

MI ST 500.3107 | Michigan Compiled Laws Annotated | Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 31. Motor Vehicle Personal and Property Protection

...Influenced and Corrupt Organizations 50 Issue of whether automobile insurer **should have discovered** alleged fraudulent submissions by medical providers at the time each...

28. 500.3135.Tort liability for noneconomic loss; personal liability; action for damages

MI ST 500.3135 | Michigan Compiled Laws Annotated | Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 31. Motor Vehicle Personal and Property Protection

...does not accrue for limitations purposes until plaintiff discovers or **should have discovered** serious impairment of body function. Horan v. Brown (1986) 384...

29. 500.2833.Fire insurance policies; contents

MI ST 500.2833 | Michigan Compiled Laws Annotated | Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956

List of 29 results for adv: "should have discovered"

Chapter 28. Fire Insurance Contracts

...until plaintiff discovers, or through the exercise of reasonable diligence **should have discovered**, that he has possible cause of action, could not be...

EXHIBIT B

List of 136 results for adv: "should have known"

1. 550.528.Order prohibiting viatical settlement contract, commissioner findings

MI ST 550.528 Michigan Compiled Laws Annotated Chapter 550. General Insurance Laws

Michigan Compiled Laws Annotated
Chapter 550. General Insurance Laws
Viatical Settlement Contract Regulation...for each violation. (b)If the provider knew or reasonably **should have known** that the provider was in violation of this act, the......which prior thereto read: "If the person knew or reasonably **should have known** that he or she was in violation of this act...**2. 445.433.Violation; penalties; assessment of act**

MI ST 445.433 Michigan Compiled Laws Annotated Chapter 445. Trade and Commerce

Michigan Compiled Laws Annotated
Chapter 445. Trade and Commerce
Scrap Metal Regulatory Act...section 7, [FN1] or section 9, [FN2] and knows or **should have known** that the person has violated that section, the person is......of property described in section 10 [FN3] and knew or **should have known** that it was stolen. (b)A person that sells scrap......section 10 to a scrap metal dealer and knew or **should have known** that it was stolen. (3)By July 1, 2016, the...**3. 691.1403.Defective highways; knowledge of defect, repair, presumption**

MI ST 691.1403 Michigan Compiled Laws Annotated Chapter 691. Judiciary

Michigan Compiled Laws Annotated
Chapter 691. Judiciary
Governmental Liability for Negligence...governmental agency knew, or in the exercise of reasonable diligence **should have known**, of the existence of the defect and had a reasonable......injuries caused by defective highways if governmental agency knew or **should have known** of existence of defect, notice may be shown by actual......governmental agency having jurisdiction over a highway agency knows, or **should have known**, of the existence of the defect or condition that makes......which caused pedestrian's injuries absent evidence that city knew or **should have known** of alleged defect in abandoned manhole. VanStrien v. City of...**4. 600.5827.Accrual of claim; general rule**

MI ST 600.5827 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 58. Limitation of Actions...or breach of trust accrues when the beneficiary knew or **should have known** of the breach. Bay Mills Indian Community v. State (2001......of a civil conspiracy had occurred and plaintiff knew or **should have known** of occurrence of those elements, and since plaintiff knew or **should have known** of conspiracy at time of workers' compensation award more than......rule that cause of action accrues when claimant knows or **should have known** of disease or injury, is obviously subjective standard, " **should have known** " is objective standard based on examination of surrounding circumstances. Moll......and, thus, accrued upon tax sale when community knew or **should have known** of any possible breach of fiduciary duty. Bay Mills Indian...**5. 600.5805.Injuries to persons or property**

MI ST 600.5805 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

List of 136 results for adv: "should have known"

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...was not delayed until date owner and resident knew or **should have known** that there was a causal connection between their illnesses and...

...producer's animals was time-barred as producers either knew or **should have known**, from damage caused more than three years before filing their...

...rule that cause of action accrues when claimant knows or **should have known** of disease or injury, is obviously subjective standard, "**should have known**" is objective standard based on examination of surrounding circumstances. Moll...

...cause of action Whether 54-year-old plaintiff knew or **should have known** that she had cause of action for physical and sexual...

6. 554.583.Liability of possessor of land for injury or death to trespasser

MI ST 554.583 | Michigan Compiled Laws Annotated | Chapter 554. Real and Personal Property

Michigan Compiled Laws Annotated

Chapter 554. Real and Personal Property

Trespass Liability Act

...on the land, or in the exercise of ordinary care **should have known** of the trespasser's presence on the land, and failed to...

...The possessor knew, or from facts within the possessor's knowledge **should have known**, that trespassers constantly intrude on a limited area of the...

7. 324.20139.Violations; penalties, fines; criminal endangerment; information awards

MI ST 324.20139 | Michigan Compiled Laws Annotated | Chapter 324. Natural Resources and Environmental Protection

Michigan Compiled Laws Annotated

Chapter 324. Natural Resources and Environmental Protection

Natural Resources and Environmental Protection Act

Article II. Pollution Control

Chapter 7. Remediation

Part 201. Environmental Remediation

...license held by that person, if that person knew or **should have known** that the release could cause personal injury or property damage...

...or license held by that person, and that knew or **should have known** that the release could cause personal injury or property damage...

8. 691.1417.Liability for sewage disposal system event; scope of liability and procedure generally; effect on common law; burden of proof of claimant

MI ST 691.1417 | Michigan Compiled Laws Annotated | Chapter 691. Judiciary

Michigan Compiled Laws Annotated

Chapter 691. Judiciary

Governmental Liability for Negligence

...governmental agency knew, or in the exercise of reasonable diligence **should have known**, about the defect. (d)The governmental agency, having the legal...

...governmental agency knew, or in the exercise of reasonable diligence **should have known**, about the defect; governmental agency, having the legal authority to...

...governmental agency knew, or in the exercise of reasonable diligence **should have known**, about the defect if they have stated valid claims with...

...governmental agency knew, or in the exercise of reasonable diligence **should have known**, about the defect, given that there was no factual basis...

List of 136 results for adv: "should have known"

9. 107.9.Care and control ordinances

MI ST 107.9 Michigan Compiled Laws Annotated Chapters 81 to 113 Fourth Class Cities

Michigan Compiled Laws Annotated
 Chapters 81 to 113 Fourth Class Cities
 The Fourth Class City Act
 Chapter XXVII. Lighting

...instrumentality, that city knew or in exercise of ordinary care **should have known** of holes in fences or walls surrounding substation, making it dangerous to children, who city knew or **should have known** played in the vicinity of substation and the alleged negligence...

10. 550.54.Discrimination prohibited; hearings; orders; fines; suspension, limitation, or revocation of license or certificate of authority

MI ST 550.54 Michigan Compiled Laws Annotated Chapter 550. General Insurance Laws

Michigan Compiled Laws Annotated
 Chapter 550. General Insurance Laws
 Prudent Purchaser Act

...fine of \$5,000.00, unless the organization knew or reasonably **should have known** it was violating this section, in which case the fine...

11. 125.996.Treble damages

MI ST 125.996 Michigan Compiled Laws Annotated Chapter 125. Planning, Housing, and Zoning

Michigan Compiled Laws Annotated
 Chapter 125. Planning, Housing, and Zoning
 Uniform Mobile Homes Warranty Act

...damages Sec. 6. A manufacturer or dealer who knows or **should have known** that an alleged defect is covered by the warranty provided...

12. 500.7074.Violations; commissioner's findings and decision; cease and desist order; commissioner orders

MI ST 500.7074 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
 Chapter 500. Insurance Code of 1956
 The Insurance Code of 1956
 Chapter 70. Multiple Employer Welfare Arrangements

...penalty of \$5,000.00, unless the MEWA knew or reasonably **should have known** it was in violation of this chapter, in which case...

13. 600.5076.Meetings with arbitrator, considerations; production of information

MI ST 600.5076 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
 Chapter 600. Revised Judicature Act of 1961
 Revised Judicature Act of 1961
 Chapter 50B. Domestic Relations Arbitration

...exchange of the information. If a party knew or reasonably **should have known** about the existence of information the party is required to...

14. 487.2168.Violations; civil fine

MI ST 487.2168 Michigan Compiled Laws Annotated Chapter 487. Financial Institutions

Michigan Compiled Laws Annotated
 Chapter 487. Financial Institutions
 Deferred Presentment Service Transactions Act
 Article 4

List of 136 results for adv: "should have known"

...violated this act and that the person knew or reasonably should have known that he or she was in violation of this act...

15. 324.5531. Violations; penalties; defenses

MI ST 324.5531 | Michigan Compiled Laws Annotated | Chapter 324. Natural Resources and Environmental Protection

Michigan Compiled Laws Annotated
Chapter 324. Natural Resources and Environmental Protection
Natural Resources and Environmental Protection Act
Article II. Pollution Control
Chapter 1. Point Source Pollution Control
Air Resources Protection
Part 55. Air Pollution Control

...the quantities or concentrations of the substance released knows or should have known at the time that the release places another person in...

...a permit issued under this part, and who knows or should have known at the time that the release places another person in...

16. 600.2948. Product liability actions; written warnings; failure to warn of material risks; burden of proof; duty of care

MI ST 600.2948 | Michigan Compiled Laws Annotated | Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 29. Provisions Concerning Specific Actions

...or limitations of the product that the defendant knew or should have known. (2) A defendant is not liable for failure to warn...

...liable unless the plaintiff proves that the manufacturer knew or should have known about the risk of harm based on the scientific, technical...

...product, a plaintiff must show that a manufacturer knew or should have known that its product posed the particular risk at issue in...

...Michigan law, a jury may not speculate that a manufacturer should have known about one risk imposed by its product, as required for...

17. 445.2503. Requirements for person intentionally sending unsolicited commercial e-mail through instate service provider or to instate e-mail address

MI ST 445.2503 | Michigan Compiled Laws Annotated | Chapter 445. Trade and Commerce

Michigan Compiled Laws Annotated
Chapter 445. Trade and Commerce
Unsolicited Commercial E-Mail Protection Act

...an e-mail service provider that the sender knew or should have known is located in this state or to an e-mail address that the sender knew or should have known is held by a resident of this state shall do...

18. 257.653. Authorized emergency vehicle; right-of-way yielded by other vehicles

MI ST 257.653 | Michigan Compiled Laws Annotated | Chapter 257. Motor Vehicles

Michigan Compiled Laws Annotated
Chapter 257. Motor Vehicles
Michigan Vehicle Code
Chapter VI. Obedience to and Effect of Traffic Laws
Right-Of-Way

...right of way to fire truck, if motorist knew or should have known, in exercise of ordinary prudence, that fire truck was approaching...

...was an officer there directing traffic if they knew or should have known that an accident would happen was not erroneous as being...

List of 136 results for adv: "should have known"

19. 446.73.Retail establishment or employee, immunity from civil liability for injury or death to customer

MI ST 446.73 | Michigan Compiled Laws Annotated | Chapter 446. Business Regulation

Michigan Compiled Laws Annotated

Chapter 446. Business Regulation

Restroom Access for Persons with Medical Conditions

...establishment or the employee of the retail establishment knew or should have known of the condition that caused the injury or death, should...

20. 500.1029.Proscribed conduct; directors or officers of insurers

MI ST 500.1029 | Michigan Compiled Laws Annotated | Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated

Chapter 500. Insurance Code of 1956

The Insurance Code of 1956

Chapter 10. Annual Audited Financial Reports

...an audit under this chapter if that person knew or should have known that the action, if successful, could result in rendering the...

21. 408.486.Issuance of check knowing that check shall not be paid; penalties; prima facie evidence

MI ST 408.486 | Michigan Compiled Laws Annotated | Chapter 408. Labor

Michigan Compiled Laws Annotated

Chapter 408. Labor

Payment of Wages and Fringe Benefits

...or other order for the payment of wages, knew or should have known it should not be paid: (a)Proof that, at the...

22. 445.437.Violation; private cause of action; damages; costs and fees

MI ST 445.437 | Michigan Compiled Laws Annotated | Chapter 445. Trade and Commerce

Michigan Compiled Laws Annotated

Chapter 445. Trade and Commerce

Scrap Metal Regulatory Act

...the seller in an action against the seller, knew or should have known that the property was stolen, the court shall award treble...

23. 451.2507.Liability of broker-dealers, agents, investment advisers, or investment adviser representatives for defamation

MI ST 451.2507 | Michigan Compiled Laws Annotated | Chapter 451. Securities, Real Estate, and Debt Management

Michigan Compiled Laws Annotated

Chapter 451. Securities, Real Estate, and Debt Management

Uniform Securities Act (2002)

Article 5. Fraud and Liabilities

...or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it...

24. 600.5855.Fraudulent concealment of claim or identity of person liable, discovery

MI ST 600.5855 | Michigan Compiled Laws Annotated | Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...victim did not constitute fraudulent concealment, and victim knew or should have known of his causes of action at the time the abuse...

List of 136 results for adv: "should have known"

...limitations period, plaintiff must prove that he neither knew nor **should have known** of potential claims, despite due diligence. State of Mich. ex...

...diligence is only factor in determining whether plaintiff knew or **should have known** of asserted malpractice and is not relevant consideration to further...

...not have asserted cause of action until they knew or **should have known** of injury and damage allegedly caused by silos and since...

25. 600.5838a. Medical malpractice claim; accrual; definitions; limitations

MI ST 600.5838a Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...106, 158 Mich.App. 663 Limitation Of Actions 95(12) Patient **should have known** that he had malpractice claim against dentist for dentist's obvious...

...malpractice statute of limitations (§600.5805) and since mother **should have known** of alleged malpractice upon diagnosis in 1971 that child had...

...diligence is only factor in determining whether plaintiff knew or **should have known** of asserted malpractice and is not relevant consideration to further...

...479, 82 Mich.App. 669 Limitation Of Actions 95(12) Patient **should have known** of her injury, and possible causal connection between injury and...

26. 125.1381. Definitions

MI ST 125.1381 Michigan Compiled Laws Annotated Chapter 125. Planning, Housing, and Zoning

Michigan Compiled Laws Annotated

Chapter 125. Planning, Housing, and Zoning

Safety Glazing Materials

...300 square inches in area, wherein a person knows or **should have known** that the use of other than safety glazing materials would...

27. 257.325. Unlicensed minor; causing or permitting to drive unlawful

MI ST 257.325 Michigan Compiled Laws Annotated Chapter 257. Motor Vehicles

Michigan Compiled Laws Annotated

Chapter 257. Motor Vehicles

Michigan Vehicle Code

Chapter III. Operator's and Chauffeur's License

Violation of License Provisions

...he had ability to control his child and knew or **should have known** of necessity and opportunity for exercising such control even though...

28. 691.1402a. Duty to maintain sidewalks; liability

MI ST 691.1402a Michigan Compiled Laws Annotated Chapter 691. Judiciary

Michigan Compiled Laws Annotated

Chapter 691. Judiciary

Governmental Liability for Negligence

...municipal corporation knew or, in the exercise of reasonable diligence, **should have known** of the existence of the defect in the sidewalk. (3...

...municipal corporation knew or, in the exercise of reasonable diligence, **should have known** of the existence of a defect in a sidewalk, trailway...

29. 432.226. Ownership and disclosure reporting threshold

MI ST 432.226 Michigan Compiled Laws Annotated Chapter 432. Gaming

List of 136 results for adv: "should have known"

Michigan Compiled Laws Annotated

Chapter 432. Gaming

Michigan Gaming Control and Revenue Act

...a reporting threshold below 5% if the company knew or **should have known** the identity of the person holding the interest below 5%...

30. 500.5112. Probable cause to believe acquiring insurer violations; notice of complaint, opportunity to confer and discuss; contested case hearing, findings and conclusions, orders

MI ST 500.5112 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated

Chapter 500. Insurance Code of 1956

The Insurance Code of 1956

Chapter 51. Organization of an Acquiring Insurer for Transaction of Certain Types of Insurance

...of \$50,000.00, unless the acquiring insurer knew or reasonably **should have known** that it was in violation of section 5106, in which...

31. 550.950. Violations, notice, hearings, monetary penalties, suspension or revocation of certificates of authority or licenses, restitution

MI ST 550.950 Michigan Compiled Laws Annotated Chapter 550. General Insurance Laws

Michigan Compiled Laws Annotated

Chapter 550. General Insurance Laws

Third Party Administrator Act

...\$5,000.00, unless the TPA or manager knew or reasonably **should have known** it was in violation of this act, in which case...

32. 256.687. Deceptive or unconscionable methods, acts, or practices

MI ST 256.687 Michigan Compiled Laws Annotated Chapter 256. Motor Vehicles

Michigan Compiled Laws Annotated

Chapter 256. Motor Vehicles

Driver Education Provider and Instructor Act

...an agreement, if the driver education provider knows or reasonably **should have known** of the student's or potential student's inability. (j) Failing to...

33. 500.2277. Violation; hearing; findings; administrative and civil remedies

MI ST 500.2277 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated

Chapter 500. Insurance Code of 1956

The Insurance Code of 1956

Chapter 22A. Certificates of Insurance

...for each violation. However, if the person knew or reasonably **should have known** that he or she was in violation of this chapter...

34. 691.1407. Immunity from tort liability; exceptions; judge, legislator, official, and guardian ad litem

MI ST 691.1407 Michigan Compiled Laws Annotated Chapter 691. Judiciary

Michigan Compiled Laws Annotated

Chapter 691. Judiciary

Governmental Liability for Negligence

...patient violated clearly established constitutional right of which reasonable person **should have known**. Gordon v. Sadasivan (1985) 373 N.W.2d 258, 144 Mich.App...

...rather than intentional nuisance, absent showing that deputy knew or **should have known** that injury was substantially certain to result if driver were...

List of 136 results for adv: "should have known"

...for examination by doctor, together with expert's assertion that therapist should have known that patient had propensity to step in front of vehicles...

...of which prospective applicants had not been advised, and employees should have known of such violation, and thus, employees were not entitled to...

35. 780.654.Direction of warrant; description of location or place subject to search and seizure; statement of grounds for issuance; suppression of affidavit accompanying warrant

MI ST 780.654 Michigan Compiled Laws Annotated Chapter 780. Criminal Procedure

Michigan Compiled Laws Annotated
Chapter 780. Criminal Procedure
Search Warrants

...believed it to be a single-family dwelling, where officers should have known that it was not a single-family dwelling because of...

...police officers who executed residential search warrant neither knew nor should have known that they were dealing with a multiple-unit dwelling, products...

...of such good faith effort is whether officers knew or should have known when they obtained the search warrant that the building involved...

36. 600.5813.Other personal actions

MI ST 600.5813 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 58. Limitation of Actions

...3d 1126 Fraud 38 Whether dairy farm owner knew or should have known of alleged fraud by manufacturer of "oxygen-free" silos, for...

...not have asserted cause of action until they knew or should have known of injury and damage allegedly caused by silos and since...

...did not begin to run until dealership owner knew, or should have known, of misrepresentations. Boyle v. General Motors Corp. (2002) 655 N.W...

37. 124.12a.Groups self-insurance pool; violations, notice, hearings, fines, suspension, limitations, revocation, liquidation, receivership, restitution or refund

MI ST 124.12a Michigan Compiled Laws Annotated Chapter 124. Municipalities

Michigan Compiled Laws Annotated
Chapter 124. Municipalities
Intergovernmental Contracts Between Municipal Corporations

...\$5,000.00, unless the pool or person knew or reasonably should have known it was in violation of this act, in which case...

38. 750.411t.Hazing by persons at educational institutions; penalties; defenses

MI ST 750.411t Michigan Compiled Laws Annotated Chapter 750. Michigan Penal Code

Michigan Compiled Laws Annotated
Chapter 750. Michigan Penal Code
The Michigan Penal Code
Chapter LX. Miscellaneous

...directed against an individual and that the person knew or should have known endangers the physical health or safety of the individual, and...

39. 780.651.Issuance of search warrant; requirements; affidavit for search warrant made by electronic means; electronically issued search warrant; proof; administration of oath or affirmation; copies; confidentiality of affidavit; suppression order

MI ST 780.651 Michigan Compiled Laws Annotated Chapter 780. Criminal Procedure

List of 136 results for adv: "should have known"

Michigan Compiled Laws Annotated
Chapter 780. Criminal Procedure
Search Warrants

...informant in some cases to determine whether police knew or **should have known** that building for which search warrant was sought contained separate...

...of informant for questioning to determine whether police knew or **should have known** that building to be searched was a multiple-unit dwelling...

...of such good faith effort is whether officers knew or **should have known** when they obtained the search warrant that the building involved...

...police officers who executed residential search warrant neither knew nor **should have known** that they were dealing with a multiple-unit dwelling, products...

40. 289.5104. Donations of food for use or distribution by nonprofit organization or nonprofit corporation; criminal and civil immunity; exception; employment or designation of food safety manager

MI ST 289.5104 Michigan Compiled Laws Annotated Chapter 289. Pure Foods and Standards

Michigan Compiled Laws Annotated
Chapter 289. Pure Foods and Standards
Food Law
Chapter V. Prohibited Acts and Penalties

...donor or nonprofit organization or nonprofit corporation knew or reasonably **should have known** when it donated or distributed the food that the food...

41. 37.2202. Employer; prohibited acts

MI ST 37.2202 Michigan Compiled Laws Annotated Chapter 37. Civil Rights

Michigan Compiled Laws Annotated
Chapter 37. Civil Rights
Elliott-Larsen Civil Rights Act
Article 2. Employers, Employment Agencies, and Labor Organizations

...employee, under the Civil Rights Act, once employer knew or **should have known** of the alleged harassment, employer was required to adequately investigate...

...failing to take prompt remedial action after it knew or **should have known** that employee had been sexually harassed. Chambers v. Tretlco, Inc...

...Rights Act; the test is whether the employer knew or **should have known** of the harassment. Henderson v. Walled Lake Consol. Schools, C.A...

...required; rather, the test is whether the employer knew or **should have known** of the harassment. Elezovic v. Ford Motor Co. (2005) 697...

42. 550.1929. Violation of act; civil fines and other penalties

MI ST 550.1929 Michigan Compiled Laws Annotated Chapter 550. General Insurance Laws

Michigan Compiled Laws Annotated
Chapter 550. General Insurance Laws
Patient's Right to Independent Review Act

...for each violation. However, if the person knew or reasonably **should have known** that he or she was in violation of this act...

43. 550.1016. Violations; cease and desist order; penalties; alteration or setting aside of order; knowing violations of cease and desist order; penalties; injunctions

MI ST 550.1016 Michigan Compiled Laws Annotated Chapter 550. General Insurance Laws

Michigan Compiled Laws Annotated
Chapter 550. General Insurance Laws
Health Benefit Agent Act

List of 136 results for adv: "should have known"

...for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this act...

44. 500.2038.Findings and orders; stay, modification or setting aside

MI ST 500.2038 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 20. Unfair and Prohibited Trade Practices and Frauds

...penalty of \$5,000.00, unless the person knew or reasonably should have known he was in violation of this chapter, in which case...

45. 500.1270.Violation; hearing; findings; order; penalties; alteration, modification, or setting aside order; violation of cease and desist order; application for injunction

MI ST 500.1270 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 12A. Navigators and Certified Application Counselors

...for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter...

46. 500.150.Violations without specific penalty; opportunity for hearing before a commissioner; findings, orders; reopening orders issued; violating cease and desist order; application for court order enjoining violation

MI ST 500.150 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 1. Scope of Code

...for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this act...

47. 408.1011.Duties of employer

MI ST 408.1011 Michigan Compiled Laws Annotated Chapter 408. Labor

Michigan Compiled Laws Annotated
Chapter 408. Labor
Michigan Occupational Safety and Health Act

...known to him, or which are so obvious that he should have known them; but an employee is not required to minutely investigate...

...that manufacturer of die being used on press knew or should have known of employer's dangerous work site, which would have rendered dies...

...that manufacturer of dies used in power press knew or should have known of unguarded nature of employer's presses; thus, manufacturer could not...

48. 257.401.Civil actions for injuries to person or property resulting from operation of motor vehicle; liability of owners or operators, lessors or lessees, dealers

MI ST 257.401 Michigan Compiled Laws Annotated Chapter 257. Motor Vehicles

Michigan Compiled Laws Annotated
Chapter 257. Motor Vehicles
Michigan Vehicle Code
Chapter IV. Civil Liability Act
Civil Liability of Owners and Operators of Motor Vehicles

List of 136 results for adv: "should have known"

...requisite standard of care, to ascertain what unidentified bus driver " **should have known**," trial court's findings that bus driver **should have known** of general icy conditions and that these hazardous conditions existed...

...the dealership to dealership's customer, garage liability insurer knew or **should have known** that the clause was void, and, with the deletion of...

...that defendant drove at dangerous speed at place where he **should have known** that trucks, by way of direct or cross traffic, were...

...after alighting from bus, supported findings that unidentified bus driver **should have known** of generally icy conditions, that such hazardous conditions existed all...

49. 500.251.Cease and desist orders, issuance by commissioner; elements, contents, service; contesting of order; noncompliance, penalties

MI ST 500.251 | Michigan Compiled Laws Annotated | Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated

Chapter 500. Insurance Code of 1956

The Insurance Code of 1956

Chapter 2. The Insurance Commissioner

...of \$30,000.00. However, if the person knew or reasonably **should have known** the person was in violation of the order, payment of...

50. 712A.18e.Order setting aside adjudication

MI ST 712A.18e | Michigan Compiled Laws Annotated | Chapters 701 to 713 Probate Code

Michigan Compiled Laws Annotated

Chapters 701 to 713 Probate Code

Probate Code of 1939

Chapter XIIA. Jurisdiction, Procedure, and Disposition Involving Minors

...13), a person, other than the applicant, who knows or **should have known** that an adjudication was set aside under this section, who...

...13), a person, other than the applicant, who knows or **should have known** that an adjudication was set aside under this section, who...

51. 500.1244.Violations, cease and desist orders, civil fines, restitution, license suspension or revocation, injunctions

MI ST 500.1244 | Michigan Compiled Laws Annotated | Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated

Chapter 500. Insurance Code of 1956

The Insurance Code of 1956

Chapter 12. Agents, Solicitors, Adjusters, and Counselors

...for each violation. However, if the person knew or reasonably **should have known** that he or she was in violation of this chapter...

52. 125.471.Repairs and drainage

MI ST 125.471 | Michigan Compiled Laws Annotated | Chapter 125. Planning, Housing, and Zoning

Michigan Compiled Laws Annotated

Chapter 125. Planning, Housing, and Zoning

Housing Law of Michigan

Article IV. Maintenance

...duty to repair all defects of which he knew or **should have known**; landlord was under no duty to inspect premises on regular...

...interest provided the stove for tenant, that he knew or **should have known** of the defect, and thereafter failed to make the necessary...

53. 700.7703.Cotrustees

MI ST 700.7703 | Michigan Compiled Laws Annotated | Chapter 700. Estates and Protected Individuals

List of 136 results for adv: "should have known"

Michigan Compiled Laws Annotated
 Chapter 700. Estates and Protected Individuals
 Estates and Protected Individuals Code
 Article VII. Michigan Trust Code
 Part 7. Office of Trustee

...cotrustee is not liable for that action unless the trustee **should have known** that the action would be taken and, if the trustee...

54. 333.16611.Licensing of dentists, dental hygienists, and dental assistants; qualifications for licensure as dental hygienist; performance of particular activities by dental hygienists; insurance requirements

MI ST 333.16611 Michigan Compiled Laws Annotated Chapter 333. Health

Michigan Compiled Laws Annotated
 Chapter 333. Health
 Public Health Code
 Article 15. Occupations
 Part 166. Dentistry

...such techniques would prevent certain injuries and that a physician **should have known** of availability and expertise of oral surgeons and failed to...

...such techniques would prevent certain injuries and that a physician **should have known** of availability and expertise of oral surgeons and failed to...

55. 600.2947.Product liability actions; alterations, misuse, awareness of risk; warnings; inherently harmful characteristics; liability of sellers other than manufacturers

MI ST 600.2947 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
 Chapter 600. Revised Judicature Act of 1961
 Revised Judicature Act of 1961
 Chapter 29. Provisions Concerning Specific Actions

...of product sold is based on whether seller knew or **should have known** of the alleged danger. Mills v. Curioni, Inc., E.D.Mich.2002...

...whether distributor of "no-slip ice carpet" product knew, or **should have known**, that product was potentially defective, precluding summary judgment on purchaser's...

56. 500.1243.Insurance agency licenses; lenders' sale of insurance products

MI ST 500.1243 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
 Chapter 500. Insurance Code of 1956
 The Insurance Code of 1956
 Chapter 12. Agents, Solicitors, Adjusters, and Counselors

...penalty of \$30,000.00, unless the person knew or reasonably **should have known** the person was in violation of this section, in which...

...of this section by a person that knew or reasonably **should have known** the acts were in violation of this section. (c)The...

57. 408.774.Violation, penalty

MI ST 408.774 Michigan Compiled Laws Annotated Chapter 408. Labor

Michigan Compiled Laws Annotated
 Chapter 408. Labor
 Boiler Act of 1965

...jury that plaintiff could recover if defendants' engineer knew or **should have known** boiler was defective was, in view of other portions of...

List of 136 results for adv: "should have known"

58. 338.1719. Refusal to issue, suspension, or revocation of licenses, grounds

MI ST 338.1719 Michigan Compiled Laws Annotated Chapter 338. Professions and Occupations

Michigan Compiled Laws Annotated
Chapter 338. Professions and Occupations
Forensic Polygraph Examiners Act...m) Conducted an examination that he or she knew or should have known violated the polygraph protection act of 1981.
[FN2] CREDIT(S...**59. 764.15. Arrest without warrant; peace officer, officer in the United States customs service or the immigration and naturalization service**

MI ST 764.15 Michigan Compiled Laws Annotated Chapters 760 to 777 Code of Criminal Procedure

Michigan Compiled Laws Annotated
Chapters 760 to 777 Code of Criminal Procedure
Chapter 764. Code of Criminal Procedure--Arrest
Chapter IV. Arrest...informant in some cases to determine whether police knew or should have known that building for which search warrant was sought contained separate......of informant for questioning to determine whether police knew or should have known that building to be searched was a multiple-unit dwelling......of fact were presented as to whether officers knew, or should have known, that warrant was almost four years old and that plaintiff's......police officers who executed residential search warrant neither knew nor should have known that they were dealing with a multiple-unit dwelling, products...**60. 125.474. Cleanliness of dwellings**

MI ST 125.474 Michigan Compiled Laws Annotated Chapter 125. Planning, Housing, and Zoning

Michigan Compiled Laws Annotated
Chapter 125. Planning, Housing, and Zoning
Housing Law of Michigan
Article IV. Maintenance...rats but rather imposes liability only if he knew or should have known of such dangerous condition. DeLuce v. Fort Wayne Hotel, C.A...**61. 324.3313. Criminal penalties; civil remedies; revocation of permit or certificate of coverage**

MI ST 324.3313 Michigan Compiled Laws Annotated Chapter 324. Natural Resources and Environmental Protection

Michigan Compiled Laws Annotated
Chapter 324. Natural Resources and Environmental Protection
Natural Resources and Environmental Protection Act
Article II. Pollution Control
Chapter 1. Point Source Pollution Control
Part 33. Aquatic Nuisance Control...resources, the environment, or human health and who knew or should have known that the violation could have such a result is guilty...**62. 722.163. Actions against foster parents and legal guardians; exceptions; definition**

MI ST 722.163 Michigan Compiled Laws Annotated Chapter 722. Children

Michigan Compiled Laws Annotated
Chapter 722. Children
Reimbursement of Legal Costs of Foster Parents...repeated criminal sexual conduct with foster child, of which parent should have known, sounded in child neglect rather than negligent supervision, and thus...

List of 136 results for adv: "should have known"

63. 780.623. Order setting aside conviction; copies; maintenance of record; exemption from disclosure; exceptions; prohibition on divulging, using, or publishing information concerning set-aside conviction; penalty

MI ST 780.623 | Michigan Compiled Laws Annotated | Chapter 780. Criminal Procedure

Michigan Compiled Laws Annotated
Chapter 780. Criminal Procedure
Setting Aside Convictions...other than the applicant or a victim, who knows or should have known that a conviction was set aside under this section and...**64. 780.131. Untried warrants, indictments, informations, or complaints against correctional facility inmates; request for disposition, statement; application of section**

MI ST 780.131 | Michigan Compiled Laws Annotated | Chapter 780. Criminal Procedure

Michigan Compiled Laws Annotated
Chapter 780. Criminal Procedure
Disposition of Untried Charges Against Inmates of Penal Institutions...designated in lower court file, and prosecutor thus knew or should have known that defendant was awaiting incarceration in state prison. People v......not been brought to trial within 180 days of incarceration, should have known that defendant was incarcerated for purposes of determining whether charges......180-day rule was violated" in that prosecution knew or should have known about res gestae witnesses and failed to use "due diligence...**65. 418.441. Claim for occupational disease and death; time**

MI ST 418.441 | Michigan Compiled Laws Annotated | Chapter 418. Worker's Disability Compensation

Michigan Compiled Laws Annotated
Chapter 418. Worker's Disability Compensation
Worker's Disability Compensation Act of 1969
Chapter . Occupational Diseases and Disablements...begins to run at the time the claimant knows, or should have known, that the disease or disability might be work related. Krol......date of disablement or after date when claimant knew or should have known that he was disabled and that disablement was work connected...**66. 451.2509. Enforcement of civil liability, applicability of federal law; liability of seller, purchaser, broker-dealers and agents, investment advisers and investment adviser representatives; liability for investment advice; persons subject to joint and several liability; right to contribution; survival of cause of action; limitations period; enforcement of contract rights; agreement waiving compliance with act or rule; other rights, remedies, or causes of action**

MI ST 451.2509 | Michigan Compiled Laws Annotated | Chapter 451. Securities, Real Estate, and Debt Management

Michigan Compiled Laws Annotated
Chapter 451. Securities, Real Estate, and Debt Management
Uniform Securities Act (2002)
Article 5. Fraud and Liabilities...after such person, in exercise of reasonable care, knew or should have known of untruth or omission, but in no event more than......of material fact existed as to whether and when investors should have known of the untruth or omission, precluding summary judgment in favor...

List of 136 results for adv: "should have known"

67. 600.5838.Malpractice claim; exception for medical malpractice; accrual; limitations

MI ST 600.5838 | Michigan Compiled Laws Annotated | Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...in insurance dispute was suspended from practice of law, insureds should have known, at least by the time that insurer began to garnish...

...claim was not saved by six-month discovery rule; client should have known potential claim for malpractice existed when in civil matter against...

68. 330.1704.Rights of recipients of services

MI ST 330.1704 | Michigan Compiled Laws Annotated | Chapter 330. Mental Health Code

Michigan Compiled Laws Annotated

Chapter 330. Mental Health Code

Mental Health Code

Chapter 7. Rights of Recipients of Mental Health Services

...by state in state hospital for mentally ill, knew or should have known that plaintiff was illegally committed and that they refused to...

69. 440.9201.General effectiveness of security agreement

MI ST 440.9201 | Michigan Compiled Laws Annotated | Chapter 440. Uniform Commercial Code

Michigan Compiled Laws Annotated

Chapter 440. Uniform Commercial Code

Uniform Commercial Code

Article 9. Secured Transactions

Part 2. Rights of Parties to Security Agreement

Subpart 1. Effectiveness and Attachment

...of chattel mortgage to secure note of lessee of farm should have known of terms of tenancy relationship and lessor's recorded mortgages was...

70. 600.5833.Accrual of claim; breach of warranty of quality or fitness

MI ST 600.5833 | Michigan Compiled Laws Annotated | Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

Chapter 58. Limitation of Actions

...to accrue, plaintiffs would have had to have known or should have known that there were leaks that were caused by failure of...

71. 550.1211a.Definitions; noninsured benefit plans; prohibited actions by health care corporations; hearing, remedies

MI ST 550.1211a | Michigan Compiled Laws Annotated | Chapter 550. General Insurance Laws

Michigan Compiled Laws Annotated

Chapter 550. General Insurance Laws

Nonprofit Health Care Corporation Reform Act

Part 2.

...penalty of \$5,000.00, unless the corporation knew or reasonably should have known it was in violation of this section, in which case...

List of 136 results for adv: "should have known"

72. 324.3115.Enforcement proceedings; penalties

MI ST 324.3115 | Michigan Compiled Laws Annotated | Chapter 324. Natural Resources and Environmental Protection

Michigan Compiled Laws Annotated
 Chapter 324. Natural Resources and Environmental Protection
 Natural Resources and Environmental Protection Act
 Article II. Pollution Control
 Chapter 1. Point Source Pollution Control
 Part 31. Water Resources Protection

...person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this...

73. 408.1031.Determination of imminent danger; notice; tagging equipment or process; order to prohibit employment or presence of individual; filing discrimination complaint; failure to comply with order; department failure to see relief; response to imminent danger complaint; opportunity to identify, label, or provide safety data sheet

MI ST 408.1031 | Michigan Compiled Laws Annotated | Chapter 408. Labor

Michigan Compiled Laws Annotated
 Chapter 408. Labor
 Michigan Occupational Safety and Health Act

...that State and State Department of Public Health knew or should have known that exposure to polybrominate biphenyl created immediate and serious hazard...

74. 450.1492a.Commencement or maintenance of derivative proceeding; shareholder criteria

MI ST 450.1492a | Michigan Compiled Laws Annotated | Chapter 450. Corporations

Michigan Compiled Laws Annotated
 Chapter 450. Corporations
 Business Corporation Act
 Chapter 4. Shareholders

...with the knowledge of those things which he knew or should have known by diligent inquiry. Hosner v. Brown (1972) 199 N.W.2d...

75. 37.2102.Civil rights; actions based on sexual harassment, familial status discrimination

MI ST 37.2102 | Michigan Compiled Laws Annotated | Chapter 37. Civil Rights

Michigan Compiled Laws Annotated
 Chapter 37. Civil Rights
 Elliott-Larsen Civil Rights Act
 Article 1. General Provisions

...was made to a higher management or that the employer should have known about the harassment because of its pervasiveness. Jager v. Nationwide...

...contends that sexual harassment was so pervasive that her employer should have known of the need for corrective measures. Gilbert v. DaimlerChrysler Corp...

76. 224.21.County road commissioners; authority to obligate county, limitation; roads under construction; duty of county to keep roads in repair; actions brought against board; liability for damages

MI ST 224.21 | Michigan Compiled Laws Annotated | Chapters 220 to 244 General Highway Law

Michigan Compiled Laws Annotated
 Chapters 220 to 244 General Highway Law
 Chapter 224. Chapter IV--County Road Law
 Chapter IV. County Road Law

...travel did not relieve city and county, which knew or should have known that terrace was used as shortcut and as place of...

List of 136 results for adv: "should have known"

...which contractor knew, or because of peculiar circumstances of case, **should have known**, created a dangerous condition in highway. Rush v. Pierson Contracting...

77. 333.22225.Approval of certificate of need; demonstration of unmet need

MI ST 333.22225 Michigan Compiled Laws Annotated Chapter 333. Health

Michigan Compiled Laws Annotated
Chapter 333. Health
Public Health Code
Article 17. Facilities and Agencies
Part 222. Certificates of Need

...of which prospective applicants had not been advised, and employees **should have known** of such violation, and thus, employees were not entitled to...

78. 500.2220.Life insurance; solicitor as agent of insurer

MI ST 500.2220 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 22. The Insurance Contract

...law to disclose to insurer information that he knew or **should have known** signaled change in answer in life policy application that could...

79. 445.63.Definitions

MI ST 445.63 Michigan Compiled Laws Annotated Chapter 445. Trade and Commerce

Michigan Compiled Laws Annotated
Chapter 445. Trade and Commerce
Identity Theft Protection Act

...of the representation, writing, communication, statement, or message knows or **should have known** is false or fraudulent. The false pretense may be a...

80. 324.41102.Fish, game or birds; regulatory powers of department

MI ST 324.41102 Michigan Compiled Laws Annotated Chapter 324. Natural Resources and Environmental Protection

Michigan Compiled Laws Annotated
Chapter 324. Natural Resources and Environmental Protection
Natural Resources and Environmental Protection Act
Article III. Natural Resources Management
Chapter 2. Management of Renewable Resources
Subchapter 1. Wildlife
Wildlife Conservation
Part 411. Protection and Preservation of Fish, Game, and Birds

...were invited to appear at meeting on disenrollment, knew or **should have known** they were formally disenrolled from membership in tribe of Chippewa...

81. 418.131.Exclusive remedy; exception

MI ST 418.131 Michigan Compiled Laws Annotated Chapter 418. Worker's Disability Compensation

Michigan Compiled Laws Annotated
Chapter 418. Worker's Disability Compensation
Worker's Disability Compensation Act of 1969
Chapter 1. Coverage and Liability

...and it is not sufficient to allege that the employer **should have known**, or had reason to believe, that injury was certain to...

...of Michigan worker's compensation statute is not satisfied where employer **should have known**, or had reason to believe, that injury to employee was...

List of 136 results for adv: "should have known"

...establish the intent to injure through allegations that the employer should have known, or had reason to believe, that injury was certain to...

82. 419.52.Contributory negligence; degree, effect; assumption of risk

MI ST 419.52 Michigan Compiled Laws Annotated Chapter 419. Miscellaneous Labor Laws

Michigan Compiled Laws Annotated
Chapter 419. Miscellaneous Labor Laws
Liability of Railroads to Employees

...his foreman, it becomes a question of fact whether he should have known the danger, and he cannot be held, as a matter...

...Mich. 440 Labor And Employment 2975 Question of whether employe should have known of danger in unloading timbers, and whether he conducted himself...

83. 37.2103.Definitions

MI ST 37.2103 Michigan Compiled Laws Annotated Chapter 37. Civil Rights

Michigan Compiled Laws Annotated
Chapter 37. Civil Rights
Elliott-Larsen Civil Rights Act
Article 1. General Provisions

...Rights Act; the test is whether the employer knew or should have known of the harassment. Henderson v. Walled Lake Consol. Schools, C.A...

...a reasonable finding that assistant principal and other school officials should have known that another team member was the victim of a hostile...

84. 600.2945.Definitions; §§600.1629, 600.2946 to 600.2949a, and 600.5805

MI ST 600.2945 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 29. Provisions Concerning Specific Actions

...that manufacturer of die being used on press knew or should have known of employer's dangerous work site, which would have rendered dies...

...could accidentally slip into automatic mode, since manufacturer knew or should have known that its switches would be used as mode selectors and...

85. 324.44520a.Nonmotorized livery boats; liability for injury or death to users; notice

MI ST 324.44520a Michigan Compiled Laws Annotated Chapter 324. Natural Resources and Environmental Protection

Michigan Compiled Laws Annotated
Chapter 324. Natural Resources and Environmental Protection
Natural Resources and Environmental Protection Act
Article III. Natural Resources Management
Chapter 2. Management of Renewable Resources
Subchapter 3. Fisheries
Charter and Livery Boats
Part 445. Charter and Livery Boat Safety

...the owner knew or in the exercise of reasonable care should have known was disqualified by law from operating the livery boat. viii...

86. 205.14.Tobacco products

MI ST 205.14 Michigan Compiled Laws Annotated Chapter 205. Taxation

Michigan Compiled Laws Annotated
Chapter 205. Taxation

List of 136 results for adv: "should have known"

Revenue Collection by Department of Treasury

...distributed outside the United States. (d)The person knew or **should have known** that the manufacturer intended the tobacco product to be sold...

87. 722.1437.Action for revocation of acknowledgment; commencement; proceedings conducted by prosecuting attorney

MI ST 722.1437 Michigan Compiled Laws Annotated Chapter 722. Children

Michigan Compiled Laws Annotated

Chapter 722. Children

Revocation of Paternity Act

...within scope of Revocation of Paternity Act; parties knew, or **should have known**, based upon their lack of contact at time of child's...

88. 419.51.Railroads, liability to employees or representatives for negligence

MI ST 419.51 Michigan Compiled Laws Annotated Chapter 419. Miscellaneous Labor Laws

Michigan Compiled Laws Annotated

Chapter 419. Miscellaneous Labor Laws

Liability of Railroads to Employees

...seq.), when allegation is made that railroad employer knew or **should have known** that employees were subject to criminal assaults during holdups or...

...that railroad, by retaining fellow employee who railroad knew or **should have known** would become dangerous during working hours, failed to provide reasonably...

89. 330.1946.Mental health professionals; duty to warn third parties; discharge of duty; team treatment; privilege of confidentiality, exceptions

MI ST 330.1946 Michigan Compiled Laws Annotated Chapter 330. Mental Health Code

Michigan Compiled Laws Annotated

Chapter 330. Mental Health Code

Mental Health Code

Chapter 9. Miscellaneous Provisions

...psychiatrist; the evidence provided compelling proof that psychiatrist knew or **should have known** that patient posed a danger to the other patients in...

90. §17.Self-incrimination; due process of law; fair treatment at investigations

MI CONST Art. 1, §17 Michigan Compiled Laws Annotated Michigan Constitution of 1963

Michigan Compiled Laws Annotated

Michigan Constitution of 1963

Chapter 1. The Fundamental Law

Constitution of the State of Michigan 1963

Article I. Declaration of Rights

...Evidence raised substantial fact issues as to whether police officers **should have known** that juvenile arrestee, who hung himself in city jail, needed...

...rights and there is no evidence that police knew or **should have known** that defendant did not comprehend those rights, rationale of Miranda...

...of cognitive understanding is so low that police knew or **should have known** that defendant is not capable of understanding. (Per Boyle, J...

91. 600.715.Corporations; limited personal jurisdiction

MI ST 600.715 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

List of 136 results for adv: "should have known"

Chapter 7. Bases of Jurisdiction

...travel packages which included rooms at hotel, and knew or **should have known** that airline would conduct business in Michigan. *Catalano v. BRI*...

...and binding itself to pay money to entity that it **should have known** was operating in Michigan. *Salom Enterprises, LLC v. TS Trim*...

92. 691.1402.Repairing and maintaining highways; damages for bodily injury or damage to property; liability, procedure, and remedy as to county roads; judgment against state; payment of judgment; effect of contractual undertaking to perform work on state trunk line highway; limitations on duties of governmental agency; liability of municipal corporation

MI ST 691.1402 Michigan Compiled Laws Annotated Chapter 691. Judiciary

Michigan Compiled Laws Annotated
Chapter 691. Judiciary
Governmental Liability for Negligence

...governmental agency having jurisdiction over a highway agency knows, or **should have known**, of the existence of the defect or condition that makes...

...material fact as to whether county highway commission knew or **should have known** about pothole in road precluded summary disposition in favor of...

93. 257.320d.Basic driver improvement course; effect of attendance upon points on driving record and notification of insurer; notice related to course; eligibility for course; database; fees; basic driver improvement course fund; study of course effectiveness; report to legislature; course sponsors, application, approval; prohibited behavior and sanctions

MI ST 257.320d Michigan Compiled Laws Annotated Chapter 257. Motor Vehicles

Michigan Compiled Laws Annotated
Chapter 257. Motor Vehicles
Michigan Vehicle Code
Chapter III. Operator's and Chauffeur's License
Cancellation, Suspension, or Revocation of Licenses

...language of an agreement, if the sponsor knows or reasonably **should have known** of the student's or potential student's inability. (j)Failing to...

94. 333.16601.Definitions; general definitions and principles of construction

MI ST 333.16601 Michigan Compiled Laws Annotated Chapter 333. Health

Michigan Compiled Laws Annotated
Chapter 333. Health
Public Health Code
Article 15. Occupations
Part 166. Dentistry

...such techniques would prevent certain injuries and that a physician **should have known** of availability and expertise of oral surgeons and failed to...

95. §28.State transportation commission; establishment; purpose; appointment, qualifications, and terms of members; director of state transportation department

MI CONST Art. 5, §28 Michigan Compiled Laws Annotated Michigan Constitution of 1963

Michigan Compiled Laws Annotated
Michigan Constitution of 1963
Chapter 1. The Fundamental Law
Constitution of the State of Michigan 1963
Article V. Executive Branch

...state trunkline highway, where wrongful death plaintiff obviously knew, or **should have known**, that road on which accident occurred was a state trunkline...

List of 136 results for adv: "should have known"

96. 565.25.Recording of instruments of encumbrance; requirements for operation of recording of instrument as perfection of instrument; instruments not subject to perfection by recording; unlawful recording, penalties

MI ST 565.25 Michigan Compiled Laws Annotated Chapter 565. Conveyances of Real Property

Michigan Compiled Laws Annotated
Chapter 565. Conveyances of Real Property
Conveyances, Deeds, and Mortgages

...620 Farm tenant, who had formerly owned farm, knew or **should have known** that he lacked ownership of farm or that ownership was...

97. 257.603.Government vehicles, authorized emergency vehicles, workers upon surface of highways

MI ST 257.603 Michigan Compiled Laws Annotated Chapter 257. Motor Vehicles

Michigan Compiled Laws Annotated
Chapter 257. Motor Vehicles
Michigan Vehicle Code
Chapter VI. Obedience to and Effect of Traffic Laws
In General

...was an officer there directing traffic if they knew or **should have known** that an accident would happen was not erroneous as being...

98. 750.81d.Assaulting, battering, wounding, resisting, obstructing, opposing, or endangering a person performing his or her duties; other offenses; running of term of imprisonment

MI ST 750.81d Michigan Compiled Laws Annotated Chapter 750. Michigan Penal Code

Michigan Compiled Laws Annotated
Chapter 750. Michigan Penal Code
The Michigan Penal Code
Chapter XI. Assaults

...kicked the arresting officers, evidence established that defendant knew or **should have known** that the person she assaulted was a police officer, and...

99. 257.402.Rear end collision; prima facie evidence of negligence

MI ST 257.402 Michigan Compiled Laws Annotated Chapter 257. Motor Vehicles

Michigan Compiled Laws Annotated
Chapter 257. Motor Vehicles
Michigan Vehicle Code
Chapter IV. Civil Liability Act
Civil Liability of Owners and Operators of Motor Vehicles

...Genuine issue of material fact remained whether driver knew or **should have known** that he did not feel well when he decided to...

100. 37.1210.Burden of proof; cost of accommodations as undue hardship; exceptions; notification of need for accommodation

MI ST 37.1210 Michigan Compiled Laws Annotated Chapter 37. Civil Rights

Michigan Compiled Laws Annotated
Chapter 37. Civil Rights
Persons with Disabilities Civil Rights Act
Article 2. Employment

...the date the person with a disability knew or reasonably **should have known** that an accommodation was needed. (19)A person shall post...

List of 136 results for adv: "should have known"

101. 570.1115.Waiver of construction lien

MI ST 570.1115 : Michigan Compiled Laws Annotated : Chapter 570. Liens

Michigan Compiled Laws Annotated
 Chapter 570. Liens
 Construction Lien Act
 Part 1

...applied to "plumbing-water service, \$1050," and lender knew or **should have known** from owner's sworn statements in support of loan draw requests...

102. 409.103.Hazardous or injurious occupations; minimum age

MI ST 409.103 : Michigan Compiled Laws Annotated : Chapter 409. Youth Employment

Michigan Compiled Laws Annotated
 Chapter 409. Youth Employment
 Youth Employment Standards Act

...In absence of bad faith, or where employer knew or **should have known** that minor employee was perpetrating a fraud, injured employee is...

103. 38.1133.Powers and duties of investment fiduciary

MI ST 38.1133 : Michigan Compiled Laws Annotated : Chapter 38. Civil Service and Retirement

Michigan Compiled Laws Annotated
 Chapter 38. Civil Service and Retirement
 Public Employee Retirement System Investment Act

...to draw the reasonable inference that investment fiduciary knew or **should have known** that issuer's notes would fail before it invested in those...

104. 722.622.Definitions

MI ST 722.622 : Michigan Compiled Laws Annotated : Chapter 722. Children

Michigan Compiled Laws Annotated
 Chapter 722. Children
 Child Protection Law

...repeated criminal sexual conduct with foster child, of which parent **should have known**, sounded in child neglect rather than negligent supervision, and thus...

105. 500.3009.Automobile and motor vehicle liability policies; minimum coverage limits; named driver exclusions; deletion of coverages

MI ST 500.3009 : Michigan Compiled Laws Annotated : Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
 Chapter 500. Insurance Code of 1956
 The Insurance Code of 1956
 Chapter 30. Casualty Insurance Contracts

...the dealership to dealership's customer, garage liability insurer knew or **should have known** that the clause was void, and, with the deletion of...

106. §11.Searches and seizures

MI CONST Art. 1, §11 : Michigan Compiled Laws Annotated : Michigan Constitution of 1963

Michigan Compiled Laws Annotated
 Michigan Constitution of 1963
 Chapter 1. The Fundamental Law
 Constitution of the State of Michigan 1963
 Article I. Declaration of Rights

...witness does not act reasonably, e.g., when he knew, or **should have known**, that were it not for his mistake, arrest warrant would...

List of 136 results for adv: "should have known"

...of such good faith effort is whether officers knew or should have known when they obtained the search warrant that the building involved...

107. 600.5851.Disabilities of infancy or insanity at accrual of claim; year of grace; tacking; removal of infancy disability; medical malpractice exception; application to imprisonment disability

MI ST 600.5851 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 58. Limitation of Actions

...victim did not constitute fraudulent concealment, and victim knew or should have known of his causes of action at the time the abuse...

108. §20.Rights of accused in criminal prosecutions

MI CONST Art. 1, §20 Michigan Compiled Laws Annotated Michigan Constitution of 1963

Michigan Compiled Laws Annotated
Michigan Constitution of 1963
Chapter 1. The Fundamental Law
Constitution of the State of Michigan 1963
Article I. Declaration of Rights

...volunteered statements by defendant, and were not questions which officer should have known were reasonably likely to elicit incriminating statements. People v. Giuchici...

...into propriety of multiple representation unless court knew or reasonably should have known that a particular conflict existed. People v. Gamble (1983) 335...

109. 330.1475.Order for alternative treatment or assisted outpatient treatment; notice regarding compliance, sufficiency, or appropriateness; powers of court without hearing

MI ST 330.1475 Michigan Compiled Laws Annotated Chapter 330. Mental Health Code

Michigan Compiled Laws Annotated
Chapter 330. Mental Health Code
Mental Health Code
Chapter 4. Civil Admission and Discharge Procedures: Mental Illness
Findings and Dispositions

...by state in state hospital for mentally ill, knew or should have known that plaintiff was illegally committed and that they refused to...

110. 330.1475.Determination of individual noncompliance with court order or insufficiency of alternative treatment; judicial proceedings and orders; objection to hospitalization

MI ST 330.1475 Michigan Compiled Laws Annotated Chapter 330. Mental Health Code

Michigan Compiled Laws Annotated
Chapter 330. Mental Health Code
Mental Health Code
Chapter 4. Civil Admission and Discharge Procedures: Mental Illness
Findings and Dispositions

...by state in state hospital for mentally ill, knew or should have known that plaintiff was illegally committed and that they refused to...

111. 500.3400.Definitions; scope of chapter

MI ST 500.3400 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956
The Insurance Code of 1956
Chapter 34. Disability Insurance Policies

List of 136 results for adv: "should have known"

...rule is otherwise if person by exercise of ordinary care **should have known** material fact or circumstance. Aetna Life Ins. Co. v. Kent...

112. 330.1472a.Orders of involuntary mental health treatment; duration

MI ST 330.1472a Michigan Compiled Laws Annotated Chapter 330. Mental Health Code

Michigan Compiled Laws Annotated

Chapter 330. Mental Health Code

Mental Health Code

Chapter 4. Civil Admission and Discharge Procedures: Mental Illness

Findings and Dispositions

...by state in state hospital for mentally ill, knew or **should have known** that plaintiff was illegally committed and that they refused to...

113. 330.1472a.Involuntary mental health treatment; initial order, second order, continuing order, petitions, duration limits; hearing

MI ST 330.1472a Michigan Compiled Laws Annotated Chapter 330. Mental Health Code

Michigan Compiled Laws Annotated

Chapter 330. Mental Health Code

Mental Health Code

Chapter 4. Civil Admission and Discharge Procedures: Mental Illness

Findings and Dispositions

...by state in state hospital for mentally ill, knew or **should have known** that plaintiff was illegally committed and that they refused to...

114. 445.1574.Manufacturers; prohibited conduct

MI ST 445.1574 Michigan Compiled Laws Annotated Chapter 445. Trade and Commerce

Michigan Compiled Laws Annotated

Chapter 445. Trade and Commerce

Motor Vehicle Manufacturers, Distributors, Wholesalers, and Dealers

...proves that the new motor vehicle dealer knew or reasonably **should have known** that the customer intended to export or resell the motor...

115. 257.627.Speed restrictions

MI ST 257.627 Michigan Compiled Laws Annotated Chapter 257. Motor Vehicles

Michigan Compiled Laws Annotated

Chapter 257. Motor Vehicles

Michigan Vehicle Code

Chapter VI. Obedience to and Effect of Traffic Laws

Speed Restrictions

...that defendant drove at dangerous speed at place where he **should have known** that trucks, by way of direct or cross traffic, were...

116. 500.3113.Persons excluded from personal protection insurance benefits; circumstances

MI ST 500.3113 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated

Chapter 500. Insurance Code of 1956

The Insurance Code of 1956

Chapter 31. Motor Vehicle Personal and Property Protection

...motorcycle that was taken unlawfully, and the person knew or **should have known** that the motor vehicle or motorcycle was taken unlawfully. (b...

117. 769.13.Notice of intent to seek enhanced sentence; contents, filing, service, time, challenge, existence of prior convictions

MI ST 769.13 Michigan Compiled Laws Annotated Chapters 760 to 777 Code of Criminal Procedure

List of 136 results for adv: "should have known"

Michigan Compiled Laws Annotated

Chapters 760 to 777 Code of Criminal Procedure

Chapter 769. Code of Criminal Procedure—Judgment and Sentence

Chapter IX. Judgment and Sentence

...571 Sentencing And Punishment 1361 Where prosecution either knew, or **should have known**, of defendant's previous convictions before his conviction on his latest...

118. 38.514.Tenure of employees; removals, suspension, discharges, etc., for cause, procedure, appeals; reductions in force

MI ST 38.514 Michigan Compiled Laws Annotated Chapter 38. Civil Service and Retirement

Michigan Compiled Laws Annotated

Chapter 38. Civil Service and Retirement

Fire Fighters and Police Officers Civil Service System

...ninety days of date that township's principal executive officer reasonably **should have known** of chief's misconduct. Goodridge v. Ypsilanti Tp. Bd. (1997) 575...

119. 500.3145.Limitation of actions for recovery of personal protection benefits; notice of injury

MI ST 500.3145 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated

Chapter 500. Insurance Code of 1956

The Insurance Code of 1956

Chapter 31. Motor Vehicle Personal and Property Protection

...rule" was tolled from date that automobile insurer knew or **should have known** that its insured had suffered a loss, namely, death of...

120. 769.12.Punishment for subsequent felony of person convicted of 3 or more felonies; sentence for term of years as indeterminate sentence; restrictions upon use of conviction to enhance sentence; eligibility for parole; imposition of consecutive sentence for subsequent felony

MI ST 769.12 Michigan Compiled Laws Annotated Chapters 760 to 777 Code of Criminal Procedure

Michigan Compiled Laws Annotated

Chapters 760 to 777 Code of Criminal Procedure

Chapter 769. Code of Criminal Procedure—Judgment and Sentence

Chapter IX. Judgment and Sentence

...Criminal Law 273.4(4) Where prosecution either knew, or **should have known**, of defendant's previous convictions before his conviction on his latest...

121. 750.145c.Child sexually abusive activity or material; offenses; penalties; application of section; affirmative defense; expert testimony; reporting by commercial film or photographic print processors; availability of evidence to defendant; local ordinances

MI ST 750.145c Michigan Compiled Laws Annotated Chapter 750. Michigan Penal Code

Michigan Compiled Laws Annotated

Chapter 750. Michigan Penal Code

The Michigan Penal Code

Chapter XX. Children

...provided evidence of ages of children, which defendant knew, or **should have known**, were of persons under age 18. People v. Girard (2005...

122. 600.901.State bar; membership; public body corporate

MI ST 600.901 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated

Chapter 600. Revised Judicature Act of 1961

Revised Judicature Act of 1961

List of 136 results for adv: "should have known"

Chapter 9. Attorneys and Counselors

...against corporation for breach of stock subscription agreement, and who **should have known** that doing so would constitute ethical violation, should have withdrawn...

123. 221.20. Public highway; definition, width

MI ST 221.20 Michigan Compiled Laws Annotated Chapters 220 to 244 General Highway Law

Michigan Compiled Laws Annotated

Chapters 220 to 244 General Highway Law

Chapter 221. Chapter I--Laying Out, Altering and Discontinuing Highways

Chapter I. Laying Out, Altering and Discontinuing Highways

...landowner had no actual notice of the user, provided he **should have known** of it. Village of Manchester v. Clarkson (1917) 162 N.W...

124. 750.227. Concealed weapons, carrying

MI ST 750.227 Michigan Compiled Laws Annotated Chapter 750. Michigan Penal Code

Michigan Compiled Laws Annotated

Chapter 750. Michigan Penal Code

The Michigan Penal Code

Chapter XXXVII. Firearms

...in front of defendant was not a practice which officer **should have known** would be reasonably likely to elicit an incriminating response, and...

125. 712A.19b. Termination of parental rights to child remaining in foster care; petition; notice; hearing; findings; grounds; opinion or order

MI ST 712A.19b Michigan Compiled Laws Annotated Chapters 701 to 713 Probate Code

Michigan Compiled Laws Annotated

Chapters 701 to 713 Probate Code

Probate Code of 1939

Chapter XIIA. Jurisdiction, Procedure, and Disposition Involving Minors

...failed to properly care for children, that she knew or **should have known** that her husband was sexually abusing their children, but failed...

126. 37.2101. Short title

MI ST 37.2101 Michigan Compiled Laws Annotated Chapter 37. Civil Rights

Michigan Compiled Laws Annotated

Chapter 37. Civil Rights

Elliott-Larsen Civil Rights Act

Article 1. General Provisions

...contends that sexual harassment was so pervasive that her employer **should have known** of the need for corrective measures. Gilbert v. DaimlerChrysler Corp...

127. 423.215. Collective bargaining; duties of employer and employees' representative; prohibited subjects between public school employer and bargaining representative of employee; placement of public school in state school reform/redesign school district or under chief executive officer; effect of local financial stability and choice act; selection method for certain departments or boards; prohibited subjects of bargaining; costs of independent examiner verification

MI ST 423.215 Michigan Compiled Laws Annotated Chapter 423. Labor Disputes and Employment Relations

Michigan Compiled Laws Annotated

Chapter 423. Labor Disputes and Employment Relations

Strikes by Public Employees

...inference from circumstances; it is sufficient that party knew or **should have known** of alleged past practice. Port Huron Educ. Ass'n, MEA/NEA...

128. 436.1801. Granting or renewing license, bond or surety requirement; selling, furnishing, or giving alcoholic liquor to minor or to person visibly intoxicated; right of action for damage or personal injury; institution and survival of action; reputation evidence; separate actions by parents; action against retail licensee; indemnification; defenses; rebuttable presumption; exclusive remedy for money damages against licensee; application of revised judicature act

MI ST 436.1801 Michigan Compiled Laws Annotated Chapter 436. Alcoholic Beverages

Michigan Compiled Laws Annotated
Chapter 436. Alcoholic Beverages
Michigan Liquor Control Code of 1998
Chapter 8

...purchaser shared alcoholic beverages, absent evidence that licensee knew or should have known that purchaser obtained beverages as second minor's agent. Walling v...

129. 418.381. Claim for compensation; notice; time limit; extension of time period

MI ST 418.381 Michigan Compiled Laws Annotated Chapter 418. Worker's Disability Compensation

Michigan Compiled Laws Annotated
Chapter 418. Worker's Disability Compensation
Worker's Disability Compensation Act of 1969
Chapter 3. Compensation

...injury, or within 90 days after the employee knew, or should have known, of the injury. Failure to give such notice to the...

130. 418.161. "Employee" defined; exclusions; notice of election

MI ST 418.161 Michigan Compiled Laws Annotated Chapter 418. Worker's Disability Compensation

Michigan Compiled Laws Annotated
Chapter 418. Worker's Disability Compensation
Worker's Disability Compensation Act of 1969
Chapter 1. Coverage and Liability

...In absence of bad faith, or where employer knew or should have known that minor employee was perpetrating a fraud, injured employee was...

131. 600.2922. Wrongful death

MI ST 600.2922 Michigan Compiled Laws Annotated Chapter 600. Revised Judicature Act of 1961

Michigan Compiled Laws Annotated
Chapter 600. Revised Judicature Act of 1961
Revised Judicature Act of 1961
Chapter 29. Provisions Concerning Specific Actions

...days after filing suit, where such person was attorney who should have known that he was not able to bring suit until he...

132. 770.1. New trial; basis

MI ST 770.1 Michigan Compiled Laws Annotated Chapters 760 to 777 Code of Criminal Procedure

Michigan Compiled Laws Annotated
Chapters 760 to 777 Code of Criminal Procedure
Chapter 770. Code of Criminal Procedure--New Trials, Writs of Error and Bills of Exceptions
Chapter X. New Trials, Writs of Error and Bills of Exceptions

...been merely cumulative, failure of prosecuting attorney, who knew or should have known about such evidence, to bring it to light amounted to...

133. 500.2833. Fire insurance policies; contents

MI ST 500.2833 Michigan Compiled Laws Annotated Chapter 500. Insurance Code of 1956

Michigan Compiled Laws Annotated
Chapter 500. Insurance Code of 1956

List of 136 results for adv: "should have known"

The Insurance Code of 1956
Chapter 28. Fire Insurance Contracts

...compliance with its instructions to cancel fire policy, whether it **should have known** that the policy was not cancelled subsequent to receiving agent's...

134. 767.40.Information; filing, subscription

MI ST 767.40 | Michigan Compiled Laws Annotated | Chapters 760 to 777 Code of Criminal Procedure

Michigan Compiled Laws Annotated

Chapters 760 to 777 Code of Criminal Procedure

Chapter 767. Code of Criminal Procedure--Grand Juries, Indictments, Informations and Proceedings Before Trial

Chapter VII. Grand Juries, Indictments, Informations and Proceedings Before Trial

...gestae witnesses, court should determine whether prosecution either knew or **should have known** of existence of missing person and then ascertain whether missing...

135. 763.1.Rights of accused; hearing by counsel, defense, confronting witnesses

MI ST 763.1 | Michigan Compiled Laws Annotated | Chapters 760 to 777 Code of Criminal Procedure

Michigan Compiled Laws Annotated

Chapters 760 to 777 Code of Criminal Procedure

Chapter 763. Code of Criminal Procedure--Rights of Persons Accused

Chapter III. Rights of Persons Accused

...in front of defendant was not a practice which officers **should have known** would be reasonably likely to elicit an incriminating response, and...

136. 418.301.Personal injury or death in course of employment; time or date of injury; mental disabilities and conditions of aging process; injury incurred in pursuit of social or recreational activity; definitions; presumptions and burden of proof; entitlement to weekly wage loss benefits; determination; notice of employee refusing offer of employment; payment of benefits to institutionalized persons; discriminatory discharge; applicability

MI ST 418.301 | Michigan Compiled Laws Annotated | Chapter 418. Worker's Disability Compensation

Michigan Compiled Laws Annotated

Chapter 418. Worker's Disability Compensation

Worker's Disability Compensation Act of 1969

Chapter 3. Compensation

...date of disablement or after date when claimant knew or **should have known** that he was disabled and that disablement was work connected...

EXHIBIT C

C P
AT THE MANHATTAN INSTITUTE

TRIAL UPDATE LAWYERS INC. MICHIGAN



MICHIGAN ON TRIAL

Litigation Industry Looks to Recapture the Great Lakes State

Twenty-five years ago, Michigan's lawmakers looked at a state in legal crisis. Plaintiffs' attorneys—whom the Manhattan Institute calls Trial Lawyers, Inc.—had made the state one of its favorite jurisdictions in the nation. To restore some sanity to the civil justice system, Michigan passed a round of legal-reform legislation in 1986, a second round in 1993 (which strengthened medical-malpractice law), and a third, more comprehensive, round in 1995.¹ As we shall see, these steps have been highly successful at curbing lawsuit abuse. Little wonder, then, that Trial Lawyers, Inc. is now committing its powerful lobbying and public-relations resources to rolling back laws that have put a dent in the litigation industry's bottom line.

A STATE IN LEGAL CRISIS

By the mid-1980s, trial lawyers had begun to exert such control over Michigan's legal system that their industry was having a deleterious effect on the finances of the state government. The state faced 1,400 lawsuits claiming \$2.4 billion, an amount equivalent to half of the general budget.² In 1984, payouts by the state transportation department, to give just one example, equaled 30 percent of its outlays on road building and improvement.³ Municipalities were also being hammered: a village with just over 1,500 residents was stuck with \$480,000 of a \$500,000 jury verdict in a case in which a driver struck a pedestrian. The jury found that the village was 10 percent at fault for failing to mark the side of the road adequately, but because the driver had only

\$20,000 in insurance, the village had to pay most of the damages.⁴ A 1985 report issued by the state senate declared: "Liability has reached epidemic proportions and presents an emergency situation to the Legislature."⁵

Michigan legislators' concerns went beyond the threat to the public fisc. They were also worried about medical-malpractice liability, which was curtailing access to care. Medical-malpractice claims in the state had spiraled upward from ten per 100 doctors in 1979 to 25 per 100 by 1985—an increase of 150 percent in just six years.⁶ From 1970 to 1984, the large Detroit metro-area counties of Wayne, Oakland, and Macomb had seen their malpractice filings jump an astounding 1,100 percent.⁷ Unsurprisingly, medical-malpractice insurance costs had also doubled in the period 1980–84 and grown even faster in the riskiest specialties.⁸ Michigan doctors took notice: 42 percent of Michigan family physicians reported that they had ceased delivering babies or reduced the number they delivered, and an even higher percentage of such doctors reported that they had cut back on surgery and treating patients likely to require intensive care.⁹

THE MICHIGAN LEGISLATURE RESPONDS

In response to these developments, the Michigan legislature in 1986 passed legislation that became a blueprint for other states trying to curb lawsuit abuse. Action was necessarily

THE FACE OF TRIAL LAWYERS, INC.

Geoffrey Fieger might be said to be the president of Trial Lawyers, Inc.'s Michigan operations. The Southfield-based attorney is perhaps best known for defending assisted-suicide doctor Jack Kevorkian, but he earns his keep as a plaintiffs' lawyer: Fieger claims to have won more multimillion-dollar verdicts than any other attorney in the country.¹⁰ His big verdicts have come in medical-malpractice, civil rights, and sexual-harassment cases, as well as in sensational trials, like the one he conducted against the *Jenny Jones Show* for failing to screen properly a guest who later killed a homosexual man, supposedly because the latter revealed on a taping of the show that he secretly admired the killer.¹¹

Fieger has been at the forefront of the Michigan trial lawyers' public- and government-relations activities. Fieger ingratiated himself with Michigan State University's law school by giving it \$4 million to establish the Geoffrey Fieger Trial Practice Institute.¹² In politics, Fieger was the Democratic Party's nominee for governor in 1998; in that campaign, he asserted that the

incumbent, John Engler, was the offspring of barnyard animals.¹³

Fieger has been no less brazen in his statements about state supreme court justices who have ruled against him. He has called them "jackasses," "Hitler," "Goebbels," and "Eva Braun."¹⁴ The level of hostility between Fieger and some of the justices led him brazenly to challenge four of the seven justices to recuse themselves from all his cases—a step that would assure him victory before the high court.¹⁵



AP Photo/Paul Sancya

Most recently, Fieger's political efforts got him into hot water. He was indicted by a federal grand jury for "conspiring to make more than \$125,000 in illegal contributions to presidential candidate John Edwards's 2004

campaign."¹⁶ The ten-count indictment alleged that Fieger and his law partner recruited "straw donors" to make contributions to Edwards, a former trial lawyer himself, and then reimbursed them in an effort to evade federal campaign limits.¹⁷ On June 2, a jury acquitted Fieger of the charges.¹⁸

bipartisan: Republicans controlled the Senate by a narrow 20–18 margin, and Democrats had to contend with a similarly narrow 57–53 majority in the House. Each body set up special investigative committees, which held extensive public hearings and heard expert testimony. These committees crafted what became Public Act 178, which introduced major changes to Michigan tort law generally, as well as to medical-malpractice law *per se* (see box, page 4).

By 1993, the Michigan legislature had determined that its medical-malpractice reforms needed to be strengthened, and so it passed a new round of bipartisan measures. The reforms it passed next, in 1995, focused on products liability, which

had specifically been exempted from the 1986 legislation. Michigan's political leaders feared that the state's eroding manufacturing base was coming under further threat from an uncertain legal climate, particularly now that competing states such as Illinois and Indiana had passed comprehensive tort-reform legislation.

A RECORD OF RESULTS

After the 1993 and 1995 reforms passed, Michigan saw quick and dramatic results. Filings of tort lawsuits fell over 50 percent in the year after the latter law took effect and have

KEY LEGAL REFORMS IN MICHIGAN

The state of Michigan has had three rounds of legal reform: in 1986, 1993, and 1995. Below are some of the reforms' key provisions.

1986: General and Medical Malpractice

- *Venue Reform.* The Michigan legislature found that plaintiffs' lawyers were shopping their cases to forums they deemed "friendly," even when their location had little relationship to the case. It therefore passed a law generally requiring cases to be filed in the county where the alleged injury occurred or where the defendant is located.
- *Joint-and-Several Liability.* In addition, lawmakers were concerned that the litigation industry was suing parties with deep pockets but little connection to a plaintiff's injury. As a consequence, defendants that juries determined to be as little as 5 percent at fault were being stuck with 100 percent of the damages.¹⁹ The new law reformed the doctrine of "joint-and-several liability," as it applied to areas of tort law other than products liability, by limiting a defendant's damage payouts to its share of responsibility; special protections of government bodies were also enacted to cover cases in which a plaintiff was judged to be partially at fault.
- *Medical Malpractice.* For medical-malpractice cases in particular, the 1986 law imposed more stringent standards on expert-witness testimony, which the state legislature concluded was being used to bring scientifically dubious cases. Also, because the legislature found that a large and increasing share of the payouts in medical-malpractice suits went for noneconomic damages such as "pain and suffering," the new law capped them at \$225,000 per case, though it provided for numerous exceptions.

1993: Medical Malpractice

- *Evidence and Disclosure.* In expanding the 1986 medical-malpractice reforms, the 1993 legislature revised expert-

witness requirements and mandated that parties to a lawsuit give greater access to each other's medical records.

- *Noneconomic Damages.* The 1993 reform package also extended the cap on noneconomic damages to include all malpractice cases, though it raised the cap to \$280,000 (or \$500,000, depending on the category of defendant).

1995: Products Liability and Failure to Warn

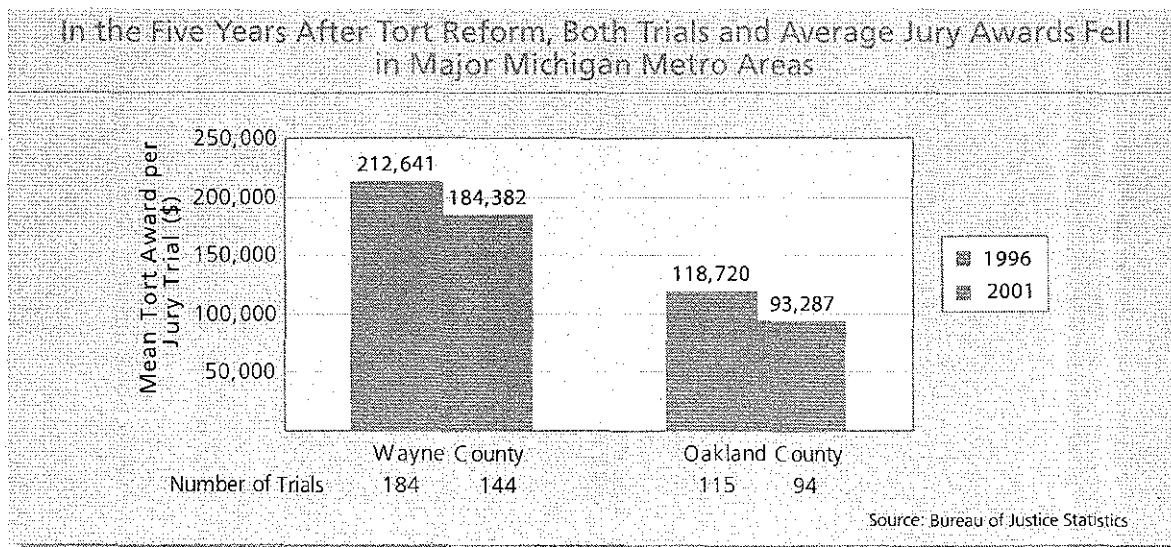
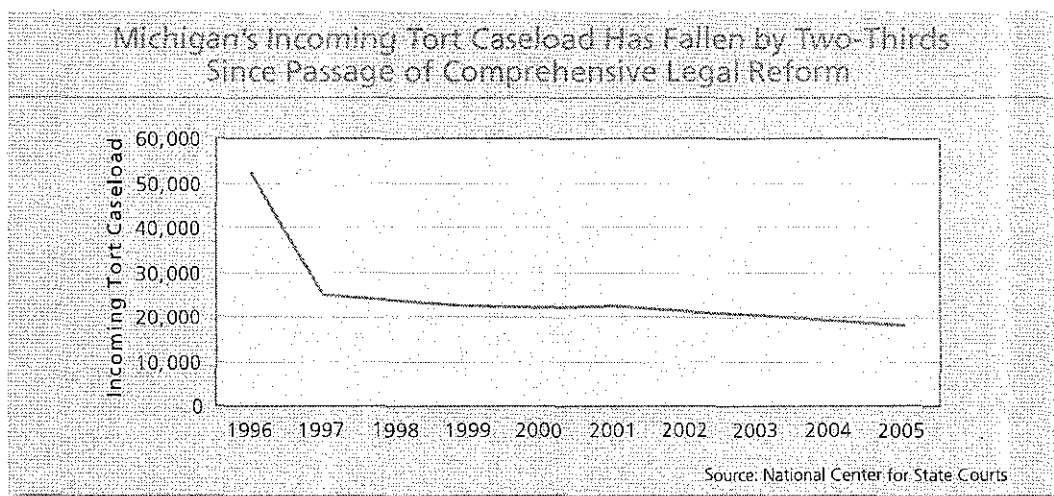
- *Products Liability.* In 1995, the legislature found that manufacturers were being held liable for products judged defective even when an alternative design was not feasible; when the design was in compliance with state and federal regulation; and even when a purchaser of the product made modifications to it. The new law protects manufacturers in such cases, though the "regulatory compliance" protection is only a presumption that can be rebutted with evidence in court.
- *Failure to Warn.* The legislature also found that defendants were being held liable for "failing to warn" customers even of obvious risks. Such rulings encourage manufacturers to flood consumers with ever more warnings, which make real risks harder to discern. One Michigan legal-reform group has even begun to hold an annual "wacky warnings" contest to parody the practice.²⁰ The 1995 law thus protected manufacturers from suits over a failure to warn of risks that were, in fact, common knowledge.
- *FDA Preemption.* The legislature also protected manufacturers of pharmaceuticals and medical products from failure-to-warn suits if the warnings in question had been approved by the U.S. Food and Drug Administration. The FDA closely monitors drug-safety warnings. In many instances, it has determined that "over-warning" can pose significant risks to public health. Michigan's law protects this regulatory scheme from second-guessing by juries of ordinary Michigan citizens.

continued to decline since then; by 2005, tort actions in Michigan had dropped to a third of their 1996 level (see top graph, below).²¹ Five years after the reforms, the number of cases that were proceeding to trial in big counties like Wayne and Oakland had declined by more than 20 percent, and the average jury verdict in cases that did go to trial had fallen by 13 to 21 percent, not accounting for inflation (see bottom graph, below).²²

The results of this reduction in legal activity were salutary and met the lawmakers' goals. As medical-malpractice insurance rates soared nationwide, those in Michigan remained stable.²³ And because the reforms have not been reversed, insurers

have even been able to reduce rates: in 2008, Michigan's largest medical-malpractice insurer of physicians cut its rates an average of 6.5 percent statewide, with average rates in Wayne County falling 13 percent.²⁴ Rates are going down even for the most vulnerable specialists: by 12 percent for neurosurgeons, by 14 percent for obstetricians, and by 25 percent for orthopedic surgeons.²⁵ These changes not only benefit doctors but also improve patients' access to care. Moreover, they reduce the practice of defensive medicine, which in turn leads to better and more affordable health care.²⁶

As lawmakers anticipated, the reforms also helped to attract new businesses and allowed Michigan to diversify away from



TRIAL LAWYERS TARGET TAYLOR



AP Photo/Al Goldis

Michigan Supreme Court Chief Justice Clifford W. Taylor was appointed by Governor John Engler to the state court of appeals in 1992, and then appointed to fill a supreme court vacancy in 1997. His colleagues elected him chief justice in 2005 and again in 2007.

Chief Justice Taylor has been at the forefront of the effort to improve Michigan's courts, having served on the Michigan legislature's Commission on the Courts in the 21st Century; and he has served as a national leader in judicial education as a member of the board of the George Mason University Law and Economics Center. The chief justice is a particular expert in tort law: he coauthored the authoritative examination, in three volumes, of personal-injury law in Michigan.

Trial Lawyers, Inc. has been hoping to replace this well-schooled and principled jurist, with liberal activist justices holding three of the seven seats on the court, replacing Justice Taylor with one of their own would facilitate a judicial assault on legislatively enacted tort reforms. The litigation industry has been flexing its political muscle in the Michigan Democratic Party, which in May announced that Justice Taylor would be its "Top Target" in the 2008 elections.²⁸ The press release detailing the Democratic strategy for unseating Taylor took him to task for writing "the judicial decision upholding Michigan's [FDA preemption] law"²⁹—a clear sign that Trial Lawyers, Inc. wants to undo the legislature's work on legal reform by installing a justice willing to substitute his policy preferences for those of the people's elected representatives.

its traditional manufacturing base. From 1999 through 2002, more biotechnology companies were started in Michigan than in any other state in the union.²⁷

TRIAL LAWYERS LOOK TO TURN BACK THE CLOCK

One business that has not benefited from Michigan's legal reforms, of course, is Trial Lawyers, Inc. The litigation industry is now flexing its lobbying and public-relations muscles in an effort to undo the state's reforms. The first stop for Trial Lawyers, Inc., predictably, was the courts. As part of a nationwide push,³⁰ trial lawyers in Michigan sought to have legislatively enacted tort reforms overturned there, but they were rebuffed by the state court of appeals in 1996 and the state supreme court in 1999 and again in 2004.³¹

At the same time, the trial lawyers were working diligently to elect their favored candidates to the bench. Republican supreme court justice Elizabeth Weaver was elected in 1994, having raised just \$187,000, but campaign-finance records later showed that the trial bar raised some \$500,000 for one of her opponents.³² Understandably, the business community was alarmed. The state chamber of commerce began working to inform voters about the impact of litigation on the overall business climate, and business leaders and reformers formed Michigan Lawsuit Abuse Watch (M-LAW), which evaluates judges' rulings and tries to raise public awareness through efforts such as a contest to identify the wackiest warning labels.

Strict-constructionist judicial appointments by conservative governor John Engler and the election of similarly inclined judges eventually tipped the balance away from the trial lawyers, who fought back furiously. In 2000, they vigorously backed three of six judicial candidates seeking three seats on the state supreme court; all told, the candidates spent a record \$6 million, and independent groups spent an additional \$10–12 million in a battle royal chronicled by Michigan supreme court justice Robert Young for the Manhattan Institute in 2001.³³

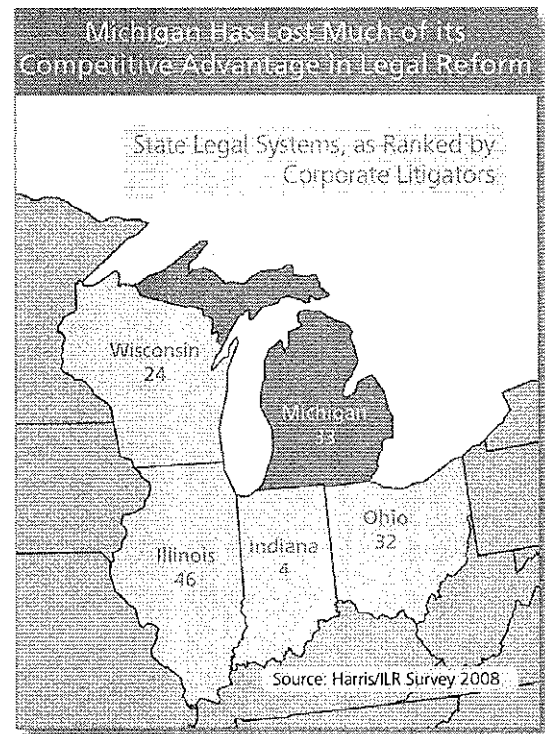
Unfortunately for the trial lawyers, their candidates were all defeated. Even so, strict constructionists today have a bare majority of four to three, and Trial Lawyers, Inc. is making a vigorous effort this year to unseat Justice Clifford Taylor (see box, opposite page).

Having failed in the courts, the litigation industry is now working to undo Michigan's legislative reforms. Spurred by the Vioxx litigation, the trial bar has been working since 2005 to repeal the state's FDA-defense law (see box, page 4), as we chronicled in a 2006 *Trial Lawyers, Inc. Update*.³⁴ More recently, Trial Lawyers, Inc. has been working to expand the scope of the state's consumer protection laws, with the intent of permitting plaintiffs to win damages without meeting the basic requirements of tort law, such as the occurrence of an actual injury, and also to extend retroactively various statutes of limitations.³⁵

In its public-relations efforts, the Michigan trial bar has even been trying to rebrand itself. Taking a cue from its national counterpart, the Michigan Trial Lawyers Association renamed itself the Michigan Association for Justice.³⁶ Last year, its president made the incredible claim that tort reforms were somehow responsible for Pfizer's decision to close a plant in the state. He even blamed tort reforms for the state's overall economic woes.³⁷

WHERE SHOULD MICHIGAN GO FROM HERE?

The association's president did get one thing right: Michigan's economy is ailing. In April, the state's unemployment rate was 6.9 percent, well above the national average, and in the past year, the state economy has shed 72,000 jobs.³⁸ Year-over-year retail sales growth trails inflation by a substantial margin, and the state's annualized growth rate in the first quarter of 2008 was an anemic 0.9 percent.³⁹ Such economic conditions are precisely why legal reform in Michigan remains so important: the state's legal climate remains a rare domain of competitive advantage, given the state's relatively high tax rates, as well as labor laws that hamper local companies' ability to compete with companies doing business in states with right-to-work laws or in foreign



countries. Within the automotive sector, which is mainly responsible for Michigan's economic woes, light-vehicle sales today are 11.2 percent lower than they were a year ago; in April, they reached their lowest point since August 1998.⁴⁰

Far from needing decades of legal progress reversed, Michigan would be wise to go further in the direction of tort reform, if for no other reason than that other states have begun to catch up with it. In the U.S. Chamber of Commerce's annual survey of business leaders and counsel on the subject of states' legal climates, Michigan now ranks only 33rd, below its neighbors Ohio (32nd), Wisconsin (24th), and Indiana (4th) (see graph).⁴¹ Accordingly, the Michigan Chamber of Commerce is pushing for a "loser pays" law, stronger incentives to settle cases, limitations on trial-lawyer contingency fees, and heightened sanctions for filing frivolous lawsuits.⁴² Each of these ideas is worthy of serious consideration. If instead of taking these positive steps, the legislature reverses course on tort reform, or the trial lawyers seize control of the state supreme court, the consequences for Michigan's already suffering economy could be severe.

Endnotes

- ¹ See Public Act 178 (1986); Public Act 78 (1993); Public Act 161 (1995); Public Act 249 (1995).
- ² See Senate Select Committee on Civil Justice Reform: A Report on Civil Justice in Michigan 5 (Sept. 26, 1985).
- ³ See Michigan Chamber Foundation, *Legal Reform in Michigan: Past, Present, and Future* 5 (2007).
- ⁴ See *id.* (citing Senate Report, *supra* note 2).
- ⁵ *Id.* at 4 (citing Senate Report, *supra* note 2).
- ⁶ See Senate Report, *supra* note 2, at 12.
- ⁷ See *id.* at 4-5.
- ⁸ See Report of the House Special Committee on Liability Insurance 2 (Oct. 31, 1985).
- ⁹ See Senate Report, *supra* note 2, at 2.
- ¹⁰ See http://www.fiegerlaw.com/about_geoffrey_fieger.html.
- ¹¹ See *id.*
- ¹² See News Release, Fieger's \$4 Million Gift (Nov. 27, 2001), available at <http://newsroom.msu.edu/site/indexer/851/content.htm>.
- ¹³ See Ceci Connolly, *Brash Candidate a Problem in Michigan?*, WASH. POST (Sept. 24, 1998), at A8.
- ¹⁴ Walter Olson, *Mich. High Court Reinstates Geoffrey Fieger Reprimand*, OVERLAWYERED.COM (Aug. 2, 2006), available at <http://overlawyered.com/2006/08/mich-high-court-reinstates-geoffrey-fieger-reprimand/>.
- ¹⁵ See *Fieger v. Ferry*, 471 F.3d 637 (6th Cir. 2006).
- ¹⁶ See News Release, U.S. Department of Justice, Michigan Attorneys Indicted for Alleged Campaign Finance Violations (Aug. 24, 2007), available at http://www.usdoj.gov/opa/pr/2007/August/07_crm_655.html.
- ¹⁷ See *id.*
- ¹⁸ See *id.*, Jim Irwin, *Fieger Acquitted in Detroit Campaign Finance Violations Case*, AP (June 2, 2008).
- ¹⁹ See House Report, *supra* note 8, at 2.
- ²⁰ See <http://www.wackywarnings.com/>.
- ²¹ See National Center for State Courts, *Examining the Work of State Courts*, 2006-33 (2007), available at http://www.ncsconline.org/D_Research/csp/2006_files/Civil.pdf.
- ²² Compare Bureau of Justice Statistics, *Tort Trials and Verdicts in Large Counties*, 2001-12 (2004), available at <http://www.ojp.usdoj.gov/bjs/abstract/tvvc01.htm> with *Trial and Verdicts in Large Counties*, 1996-14 (2000), available at <http://www.ojp.usdoj.gov/bjs/abstract/tvvc96.htm>. The two years are the most recent to be released by the Bureau.
- ²³ See Michigan Chamber Foundation, *supra* note 3, at 10.
- ²⁴ See Press Release, Michigan State Medical Society, *Liability Rate Drop Shows Tort Reform is Working* (Nov. 20, 2007), available at http://www.legalreforminthenews.com/News%20Releases/ML_MedSociety_11-20-07.html.
- ²⁵ See *id.*
- ²⁶ Cf. Daniel Kessler and Mark McClellan, *Do Doctors Practice Defensive Medicine?*, Q. REV. ECON. FIN. (May 1996).
- ²⁷ See <http://www.michigan.org/medc/ttc/LifeSciences/>.
- ²⁸ Press Release, Michigan Democratic Party, *Michigan Democratic Party Highlights Cliff Taylor as Top Target in 2008* (May 29, 2008), available at <http://www.michigandems.com/052908prs.html>.
- ²⁹ *Id.*
- ³⁰ See generally American Tort Reform Foundation, *Defrocking Tort Reform* (2008).
- ³¹ See *Heinz v. Chicago Road Investment Co.*, 549 N.W.2d 47 (Mich. App. 1996), appeal denied, 567 N.W.2d 250 (Mich. 1997) (upholding collateral source reform); *McDougall v. Schanz*, 597 N.W.2d 148 (Mich. 1999) (upholding medical expert standards); *Phillips v. Mirac, Inc.*, 685 N.W.2d 174 (Mich. 2004) (upholding damage caps).
- ³² See Justice Robert Young, *Reflections of a Survivor of State Judicial Election Warfare*, Manhattan Institute Civil J. Rpt. 2 (June 2001), available at http://www.manhattan-institute.org/html/cjr_2.htm.
- ³³ See *id.*
- ³⁴ See http://www.triallawyersinc.com/updates/tli_update_michigan_0606.html.
- ³⁵ See American Tort Reform Foundation, *supra* note 30, at 8, 12.
- ³⁶ See http://www.legalreforminthenews.com/News%20Releases/ML_Chamber-MTLA-NameChange-8-7-07.html.
- ³⁷ See Robert M. Raitt, *Don't Buy Into Tort Reform's Promises*, DETROIT FREE PRESS (Sept. 7, 2007), available at <http://www.michiganjustice.org/MI/index.cfm?event=showPage&pg=press>.
- ³⁸ See Michigan Fast Facts (Apr. 2008), available at <http://www.milmi.org/>.
- ³⁹ See Senate Fiscal Agency, *Michigan Economic Indicators* (Apr. 2008), available at http://www.senate.michigan.gov/sfa/Publications/EconInd/MEI_APR08.PDF.
- ⁴⁰ See *id.*
- ⁴¹ See U.S. Chamber of Commerce Institute for Legal Reform, *Lawsuit Climate 2008*, available at <http://www.instituteforlegalreform.com/states/lawsuitclimate2008/index.cfm>.
- ⁴² See Michigan Chamber Foundation, *supra* note 3, at 24-25.

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History of Tort Reform in Michigan

What is a Tort?

A tort is a civil wrong, wherein one person's conduct causes injury to the person or property of another, in violation of a duty imposed by law. Tort law seeks to compensate victims and encourage implementation of reasonable safeguards against possible injury. A tort is distinct from a crime, in that, a crime is an offense against the public pursued by the state, and punishable by fine or imprisonment, while a tort is a private injury pursued by the injured party, who seeks a civil remedy (usually monetary compensation).

What is Tort Reform?

Tort reform involves making changes to the existing tort system to reduce what advocates see as the adverse effects of litigation. At the heart of these adverse effects are the increases in insurance costs incurred by health care providers, manufacturers, and other groups, whose activities expose them to lawsuits. In response, legislatures have passed a variety of public acts that change common law rules and rules of civil procedure, as they relate to medical malpractice, product liability, and other areas of tort law, in an attempt to protect doctors, manufacturers and others from the costs of lawsuits. Opponents of tort reform believe that such reform efforts will diminish safety incentives and put patients, consumers, and others, at greater risk of harm.

Highlights

1986: Medical Malpractice and General Tort Reform

- 1986 PA 178 (House Bill No. 5154).

1993: Medical Malpractice Reform

- 1993 PA 78 (Senate Bill No. 270).

1995: Product Liability and General Tort Reform

- 1995 PA 249 (Senate Bill 344).
- 1995 PA 161 (House Bill 4508).

Tort Reform in Michigan

Almost every year the Michigan Legislature passes legislation that effects the state tort law system in some way. All such legislation could be considered "tort reform." Also, the implementation of and changes to the no-fault insurance laws and dram shop laws may be considered as major tort reform. Since the mid 1980s, there have been three major packages of general, non-automobile related tort reform legislation. This report addresses those three major packages.

Overview of History of Tort Reform Since 1986

1986			
Public Act No. 178	House Bill No. 5154	Amended Revised Judicature Act (1961 PA 236)	Included general changes to tort law and specific changes to medical malpractice actions, including, changes to joint and several liability, caps on damages, and requirements for mediation, among other provisions.
1989			
Public Act No. 5	House Bill No. 4010	Amended Revised Judicature Act (1961 PA 236)	Protected retirement plans from bankruptcy proceedings and other judgments. Important for medical professionals whose vulnerability to malpractice judgments could leave them exposed to the loss of their retirement funds.
1993			
Public Act No. 78	Senate Bill No. 270	Amended Revised Judicature Act (1961 PA 236)	Primarily dealt with medical malpractice actions, putting caps on damages, revising regulations regarding expert witnesses, and requiring affidavit of merit, among other provisions.
1995			
Public Act No. 161	House Bill No. 4508	Amended Revised Judicature Act (1961 PA 236)	Made general changes to tort law including limits on joint liability, and changes to venue requirements, among other provisions.
Public Act No. 249	Senate Bill No. 344	Amended Revised Judicature Act (1961 PA 236)	Made changes to all tort law and specific changes to product liability actions , including, limiting scope of liability for product liability suits, providing that manufacturer or seller is not liable for a drug approved by federal Food and Drug Administration, limiting damages for noneconomic loss, and establishing criteria for expert witnesses, among other provisions.

1986 & 1989 Legislation: Medical Malpractice and General Tort Reform

In 1986, the Michigan Legislature passed Public Act No. 178 (House Bill No. 5154), which amended the Revised Judicature Act (1961 PA 236). This legislation had a number of provisions that apply to all tort actions, and other provisions that apply only to medical malpractice actions. The following provisions applied to **all tort actions**:

- Limited the liability of a party in an action (other than product liability) involving an at-fault plaintiff based on the party's percentage of fault.
- Limited the liability of governmental agencies (except hospitals) even in cases involving a plaintiff without fault.

- Required that all actions in which it is claimed the damages exceed \$10,000 be submitted to pre-trial mediation.
- Required future damages over \$250,000 awarded by verdict to be paid in periodic payments.
- Required a court to award costs and fees in the case of a frivolous suit or defense.
- Prohibited interest on future damages before they are awarded, and index the rate of interest on judgments to U.S. treasury notes.
- Changed venue requirements, so that the venue must be where cause of action arose and where defendant resides or conducts business, with certain additional exceptions.
- Modified the "collateral source rule," and allow an award of economic damages to be reduced by the amount paid by a third party (a collateral source).

The following provisions applied only to **medical malpractice actions**:

- Placed a cap of \$225,000 on non-economic damages, with numerous exceptions such as death and intentional torts.
- Specified the qualifications of an expert witness in a case against a specialist, and prohibit experts from testifying on a contingency fee basis.
- Provided for the dismissal of a defendant upon an affidavit of noninvolvement.
- Required each party to provide security for costs or file an affidavit of a medical opinion that the claim or defense was meritorious.
- Required every action to be mediated by a panel of three attorneys and two health care providers.
- Amended the act's statute of limitations provisions by revising the time when a claim would accrue.

It should be noted that House Bill No. 5209 (1986 PA 173) was tie barred to House Bill No. 5154, and it amended the Insurance Code of 1956 to impose new requirements on companies writing commercial liability insurance.

It should also be noted that in 1986, other significant tort legislation was passed. Public Act No. 175 (House Bill No. 5163) was passed, which extended governmental immunity from tort liability, and Public Act No. 176 (House Bill No. 4550) was passed, which limited the scope of liability for dram shops.

Though not traditionally thought of as tort reform, but important for medical professionals, is Public Act No. 5 of 1989 (House Bill No. 4010), which protects retirement plans from bankruptcy proceedings and other judgments. This legislation was important for medical professionals whose vulnerability to malpractice judgments could leave them exposed to the loss of their retirement funds.

1993 Legislation: Medical Malpractice

In 1993, the Michigan Legislature again took up **medical malpractice reform** and passed Public Act No. 78 (Senate Bill No. 270). This bill amended the Revised Judicature Act (1961 PA 236) to do the following:

- Provided for a cap of \$280,000 (or up to \$500,000) on the total amount of non-economic damages recoverable by all plaintiffs in a medical malpractice action.
- Revised regulations regarding expert witnesses in medical malpractice actions in order to set higher standards for a person to qualify as an expert witness.
- Required a 182-day notice before a medical malpractice action could be commenced and require a response to that notice within 154 days.
- Required each party to give the other access to related medical records in the party's control.
- Required all medical malpractice plaintiffs to file an affidavit of merit and require all defendants to file an affidavit of meritorious defense.
- Permitted the binding arbitration of medical malpractice actions involving damages of \$75,000 or less and repeal current provisions on health care arbitration.

- Revised the statute of limitations for certain medical malpractice claims.
- Made other provisions pertaining to burden of proof, waiver of a plaintiff's physician patient privilege, and interest on judgments.

1995-96 Legislation: Product Liability and General Tort Reform

In 1995, two bills were passed that made significant changes to Michigan's tort law system. Public Act No. 161 (House Bill No. 4508) amended the Revised Judicature Act (1961 PA 236) to do the following in regard to **tort actions** seeking damages for personal injury, property damage, or wrongful death:

- Eliminated joint liability and the reallocation of uncollectible amounts, except in medical malpractice actions.
- Required the trier of fact to consider the fault of nonparties, as well as parties, in determining the percentage of total fault in an action involving fault of more than one person.
- Provided that noneconomic damages may not be awarded to a party whose percentage of fault exceeds the aggregate fault of the other persons, and that the party's economic damages must be reduced.
- Revised provisions governing venue.

The other piece of legislation, Public Act No. 249 (Senate Bill No. 344) amended the Revised Judicature Act (1961 PA 236) to do the following in regard to **product liability actions**:

- Provided that a manufacturer or seller is not liable if a practical and technically feasible alternative production practice was not available.
- Created a rebuttable presumption that a manufacturer or seller is not liable if the aspect of production that allegedly caused the injury complied with federal or state standards.
- Allowed the admission in evidence, for certain purposes, of subsequent changes in theory, knowledge, technique or procedure.
- Provided that a manufacturer or seller is not liable if the harm was caused by alteration or misuse of the product that was not reasonably foreseeable; if the user was aware of , and voluntarily exposed himself to an unreasonable risk; or if the alleged harm was caused by an inherent characteristic of the product.
- Specified that a manufacturer or seller is not liable for failure to warn if the product was provided for use by a sophisticated user.
- Specified that a defendant is not liable for failure to warn of risks that should have been obvious to a reasonably prudent product user or that are a matter of common knowledge.
- Provided that a manufacturer or seller is not liable for a drug that was approved by the Food and Drug Administration.
- Removed certain defenses for a defendant who had actual knowledge of a product's defect.
- Placed a cap on damages for noneconomic loss.
- Redefined "product liability action" to include injuries or death resulting from the sale of a product.

Also, Public Act No. 249 did the following in regard to **all tort actions**:

- Established criteria for expert witnesses.
- Provided that a novel form of scientific evidence may be admitted only if it has achieved general scientific acceptance among experts in the field.
- Provided that it is an absolute defense if the person who was injured or killed had an impaired ability to function due to the influence of intoxicating alcohol or a controlled substance and was 50% or more the cause of the accident or event; and requires a reduction of damages if the percentage was under 50%.

- Provided that a defendant is jointly and severally liable for a crime involving gross negligence, or a crime involving the use of alcohol or a controlled substance that is a violation of a specific statute.
- Limited malpractice actions against certified public accountants.

The Future of Tort Reform

As the twentieth century progressed, the scope of tort liability expanded and tort law became increasingly helpful to plaintiffs. However, by the end of the twentieth century, the courts, state legislatures, and the U.S. Congress have begun to increasingly limit the scope of tort law in a way that is favorable to defendants. Legislative tort reform has focused on restricting liability by imposing caps on damages and limiting joint and several liability, among other reforms. Recent legislative initiatives at the federal and state level would indicate that the limiting of the scope of tort law will continue.

Sources of Information

The following sources of information are helpful in understanding more about tort reform in Michigan:

- 1) Bill Analyses for House Bill No. 5154 (1986 PA 178), Senate Bill No. 270 (1993 PA 78), Senate Bill No. 344 (1995 PA 249), and House Bill No. 4508 (1995 PA 161), produced by the House Legislative Analysis Section and the Senate Fiscal Agency.
- 2) Volume 78, No. 6 of the Michigan Bar Journal, June 1999, which covers Tort law in Michigan.
- 3) Safran, Karen H. *Annual Survey of Michigan Law*, Wayne Law Review, Summer 2004. (50 Wayne L. Rev. 757).
- 4) Rabaut, Martha. *Where's (Dr.) Waldo? Finding the Medical Malpractice Expert Witness Who Has Earned His Stripes*, Michigan State University Journal of Medicine & Law, Summer 2005. (9 Mich. St. U. J. Med. & L. 289).
- 5) Scherlinck, Jeanne M. *Medical Malpractice, Tort Reform, and the Separation of Powers Doctrine in Michigan*, Wayne Law Review, Winter, 1998. (44 Wayne L. Rev. 313).

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